RENT CONTROL: ISSUES AND OPTIONS

A CONSULTATION PAPER FROM

THE MINISTRY OF HOUSING

February 1991

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A CONSULTATION PAPER FROM

THE MINISTRY OF HOUSING

Ontario

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February 1991

The Honourable Dave Cooke
Minister of Housing
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A MESSAGE FROM THE MINISTER OF HOUSING

The Government of Ontario is committed to the ideal that safe, secure, affordable housing is a basic human right. As part of reaching that ideal, the government has identified housing policy priorities in:

- creating new supplies of affordable housing;
- the effective use of government-owned lands for housing;
- protecting existing affordable housing.

An integral part of maintaining and protecting existing affordable housing is a system of fair, easily understandable rent control. To help us develop the best rent control system to serve the people of Ontario, we need your help.

This is the first in a series of consultations that we will undertake as we develop a comprehensive housing strategy for Ontario.

The following material outlines issues and options related to rent control. There are nine major policy areas raised in the material. In each area, issues and possible options are set out. A range of options is canvassed and in some cases, a set of preferred options is identified in order to help discussion and to indicate our current thinking.

I want to stress that the purpose of this consultation paper is to gain your views. We have much to learn from listening to the people's ideas, and we are prepared to review and adjust our approaches. It is for this reason that I am pleased that the Standing Committee on General Government of the Legislature of Ontario is giving its consideration to this consultation paper.

I look forward to hearing your views and urge you to send in your submissions by April 5, 1991. In the meantime, I will be visiting many communities across Ontario during March and early April with my colleagues, Margaret Harrington, Parliamentary Assistant for Housing and M.P.P. Niagara Falls, and Don Abel, M.P.P. Wentworth North, to hear directly from the public about rent control options.

If you wish to obtain additional copies of this paper, please contact your local Rent Review Services office or:

Ms. Ruth Esdelle
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Ministry of Housing
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Phone: (416) 585-7041

We can also provide you with a summary highlighting the key areas of the rent control consultation paper and, of course, all material is available in either English or French.

When you have considered the issues, please forward your submission to:

The Honourable Dave Cooke
Minister of Housing
Consultation Paper on Rent Control
Ministry of Housing
777 Bay Street
Toronto, Ontario
M5G 2E5

In the meantime, I wish to thank you for giving this important matter your time and consideration. I look forward to hearing from you.

Dave Cooke
Minister of Housing

February 1991

TABLE OF CONTENTS

1.	Ontario's Directions in Housing Policy	1
2.	Rent Regulation in Ontario	2
3.	Basis of Rent Control Reform	5
4.	Issues and Options for Rent Control	7
4.1	Scope of Rent Control	7
4.2	Annual Rent Increases	11
4.3	Increases Above the Guideline	17
4.4	Capital Expenditures	25
4.5	Maintenance	38
4.6	Rent Reduction	41
4.7	Rent Information	46
4.8	Decision-Making Mechanisms and Administrative Structure	54
4.9	Rental Housing Protection	63
APPENDICES: A.	Glossary of Rent Terms	72
B.	Key Statistics on Rental Housing Stock in Ontario	76

1. ONTARIO'S DIRECTIONS IN HOUSING POLICY

A new system of rent control is just one element in the government's overall housing strategy. To develop a comprehensive approach to housing policy will be the work of many years but the Ministry of Housing has identified key priorities for policy development in 1991. The priorities include:

- better use of government land for housing;
- improving the quality of life in public housing; and
- strategies to increase the supply of affordable housing.

All these policies will be subject to a process of public consultation.

The development of Ontario's housing policy is based on the following fundamental principles:

- access to safe, secure and affordable housing, suitable to people's needs, is a basic human right;
- housing is fundamental to individual and family well-being and the quality of life in Ontario communities;
- housing contributes significantly to the prosperity and stability of Ontario's economy; and
- responsibility for the provision of housing is a shared responsibility among all levels of government and among all sectors of Ontario's economy and society.

Rent control policies and all other housing policy initiatives will strive to translate these principles into action.

2. RENT REGULATION IN ONTARIO

BACKGROUND

Since 1975, Ontario has had three systems of rent review:

- the Residential Premises Rent Review Act, 1975 (2nd Sess.) (RPRRA) from July 30, 1975 to November 30, 1979;
- the Residential Tenancies Act (RTA) from December 1, 1979 to December 31, 1986; and
- the Residential Rent Regulation Act, 1986 (RRRA) from January 1, 1987.

Initially, only buildings rented prior to 1976 were covered by rent review. Under the Residential Tenancies Act, rental units with rents of $750 and more were also exempted from the legislation until 1984. As of August 1, 1985 virtually all privately owned rental units are covered by rent review.

All of these rent review systems have been based on the "*cost pass through*" principle. Rent increases could be taken up to a guideline level set by the government without an application by a landlord and approval of a government body. For increases above the guideline, a landlord's application would be reviewed to determine if specified costs justified the requested rent increase. If they did, the costs could be "passed through" to tenants in increased rent. Tenants could also apply for a rebate of illegal rent increases. It is important to keep in mind that rent review was designed to control rent increases as opposed to the level of rents.

The current legislation in Ontario is the Residential Rent Regulation Act, 1986, usually referred to as RRRA. It is administered by the Ministry of Housing.

Under the RRRA, the major factors that can justify a rent increase above the guideline include:

- operating costs such as heating, cleaning and municipal taxes;
- capital expenditures such as replacing a furnace or a roof;

- financing costs such as interest rate changes;
- financial loss created by the purchase of a building;
- economic loss where rents do not earn the allowed rate of return on defined equity; and
- equalization where rents for similar units in a building can be made the same but the landlord's overall revenue is not increased.

Other important features of the RRRA include:

- the Residential Rental Standards Board that helps ensure a proper level of maintenance for residential rental dwellings; the Board examines any failure by a landlord to comply with a municipal work order dealing with a serious violation of a substantial maintenance standard; the Board's report can lead to a rent review Order suspending a rent increase until maintenance problems are fixed; and
- the Rent Registry which keeps the maximum rent for rental units in the province.

This rent review system features a two-stage process consisting of an administrative review by the Ministry of Housing of landlord applications for an increase above the guideline, and a quasi-judicial appeal where decisions of a rent review administrator may be appealed to the Rent Review Hearings Board. The same basic procedures apply to tenant rebate and other applications.

On November 28, 1990, a Bill was introduced to amend the RRRA. Known as "Bill 4", the purpose of the proposed legislation is to provide a temporary limit on large rent increases allowed under the current rent regulation system while consultation on a new and permanent system of rent control proceeds. Bill 4 is currently before the Legislature of Ontario for review.

THE LANDLORD AND TENANT ACT

The Landlord and Tenant Act provides protection to tenants and landlords by setting out the rights and obligations of both tenants and landlords. This Act, administered by the Ministry of the Attorney General, establishes requirements for terminating a tenancy by either the landlord or the tenant, responsibility for repair and maintenance of a residential rental unit, and rights of privacy and access. The Ministry of Housing provides information to the public on this legislation.

The Landlord and Tenant Act provides security of tenure for tenants in the form of statutory safeguards against unlawful eviction and is important companion legislation to a system of rent control which will help ensure security of tenure against economic eviction: that is, tenants having to end a tenancy because they cannot afford a large rent increase.

While the Landlord and Tenant Act is an integral piece of the framework regulating the relationship between landlords and tenants, the focus of the current consultation is on rent control.

3. BASIS FOR RENT CONTROL REFORM

Throughout this consultation paper, a series of underlying policy principles are used as a framework to guide the discussion on the development of a new rent control system. These principles are:

- enhanced tenant protection, including protection from high rent increases and inadequate maintenance standards;
- greater tenant participation in the decision-making affecting their unit and building;
- less complexity in the legislation and administration of rent regulation while ensuring greater certainty about rent increases for tenants and landlords;
- maintaining the separation of the Landlord and Tenant Act from rent regulation while increasing the compatibility of the two systems;
- providing an environment and capacity for regular maintenance and repair decisions;
- enhanced provision of information to tenants and landlords;
- fair, accessible and timely decision-making; and
- provisions for retaining the existing rental housing stock.

Issues, options and, where identified, preferred approaches are assessed against these principles. In many cases, one principle must be weighed against another -- for example, certain solutions may reduce complexity but also reduce needed tenant information. The task is to design an overall system which best meets the challenging principles set out.

To help focus debate on the integral components of any rent control system, nine issue areas have been identified and options related to them identified. These main issue areas are:

- scope of rent control coverage -- options on what to include under rent control and how to determine if a unit is covered by the legislation;

- annual rent increase (guideline) -- options on the timing and the basis of an annual rent increase;

- exceptions to the annual rent increase -- whether increases above the guideline should be permitted and if so, what should be permitted;

- capital expenditures -- how should capital repairs and renovations be addressed;

- maintenance -- how should adequate maintenance standards be ensured;

- rent reduction -- options on tenant challenge of increases within the guideline, landlord and tenant agreements on the provision of services and facilities relative to the rent charged, and how tenants can be compensated for illegal rents charged;

- rent information -- options on the administration of a central repository of rent information (a rent registry), what should be registered and what information should be provided;

- decision-making and administration structure -- options on dispute resolution systems, assistance to parties in dispute, enforcement and other administrative considerations; and

- conversion of rental properties -- options on the statutory system for controlling the conversion, demolition and renovation of rental properties.

In canvassing the nine issue areas, a wide range of options has been identified and assessed. In some areas, a preferred approach has been put forward for discussion and to obtain public views. It should be stressed that the purpose of the consultation is to obtain public input for the policy development process and no final direction for rent control policy and legislation has yet been determined.

4. ISSUES AND OPTIONS FOR RENT CONTROL

4.1 SCOPE OF RENT CONTROL

ISSUE: COVERAGE OF RENT CONTROL

The first issue for discussion is to set out what should be included or covered by a rent control system. There must be a clear set of criteria to define what the legislation covers so that tenants and landlords have a clear understanding of the rights, protections and obligations created.

BACKGROUND

When rent review was first introduced in Ontario, only buildings occupied before January 1, 1976 were covered. Under the Residential Tenancies Act, rental units with rents of $750 and more were also exempted from the legislation until 1984. As of August 1, 1985 virtually all privately owned rental units were covered, including multiple unit complexes, single family homes and rented condominiums.

There are currently exemptions under the Residential Rent Regulation Act, 1986 (RRRA), that mirror exemptions found under the Landlord and Tenant Act. However, there are some elements of coverage that differ between the two pieces of legislation. For example, the Landlord and Tenant Act exempts from its coverage premises where the owner or immediate family shares bathroom and/or kitchen facilities with the tenant, while rent review does not. The protection against economic eviction does not seem relevant in situations where the individual is not protected against actual eviction. Similarly, rent review has not covered some types of accommodation covered by the Landlord and Tenant Act. For example, tenants have criticized the lack of coverage in government-owned buildings that are not operated under non-profit programs.

OPTIONS CONSIDERED

One of the policy principles identified for rent control is to enhance the compatibility of rent control and the Landlord and Tenant Act while maintaining the separation of the two statutes. A number of approaches were considered for consultation but did not meet this policy objective. For example, one approach could have been to develop a specific list of inclusions and exclusions that may or may not mirror the Landlord and Tenant Act. Some of the options included decreasing coverage of rent control, based on factors such as:

- agreements by landlord and tenant;
- whether the rent was very high (eg. $2000 per month);
- high vacancy rates in a particular area;
- whether landlords made available a certain number of rent-geared-to income units.

There is also an option of excluding new buildings for a period of five years in order to encourage the construction and creation of new rental units and to recognize the difficulties in the start-up rental period.

PREFERRED APPROACH FOR DISCUSSION

The preferred approach for discussion is to follow the general coverage of the Landlord and Tenant Act for rent control coverage with only two exceptions:

- Cover by rent control, the accommodation component of facilities that provide certain "care" services. Facilities such as unlicensed rest and retirement homes may provide residents with certain services to assist them in aspects of daily living. The services themselves would not be subject to rent control but it would be prohibited to tie the provision of such services to the provision of accommodation to a particular tenant or prospective tenant unless required to do so under government funding programs. Facilities providing care to individuals are not currently covered by the Landlord and Tenant Act.

- Continue to exclude from coverage under rent control non-profit housing units which are financially supported by the federal and provincial governments. Such units would continue to be subject to the provisions of the Landlord and Tenant Act.

This creates only minor changes from the current coverage of rent review legislation but increases compatibility between the two statutes. It would, however, extend coverage to those residential facilities offering care such as rest and retirement homes, providing increased protection against economic eviction to those potentially vulnerable populations. The legislation would prohibit the linking of care services to the unit unless required to do so to receive government funding. This provision would not include those facilities that are licensed by other ministries or government bodies, allowing for the ongoing administration of those facilities.

The issue of assisting persons in unlicensed facilities is one of particular concern to the government. That is why Dr. Ernie Lightman was appointed by the Minister of Citizenship, the Honourable Elaine Ziemba, to inquire into the conditions experienced by persons in unlicensed facilities and to make recommendations to the government. It may be that Dr. Lightman will identify a more comprehensive approach to this problem area. However, since there may be rent control implications, it was thought appropriate to highlight the rent control-related issues for public comment in this consultation paper as well.

The rent control system would not apply to non-profit housing developed under government programs although the tenancy relationship is currently covered by the Landlord and Tenant Act. While there has been some consideration of extending rent control to market units in non-profit projects, the drawbacks would include inconsistency within a project with some controlled and some non-controlled units; and inconsistency between projects depending on source of funding as provincial legislation may not be applicable to federally funded non-profit housing. A large proportion of Ontario's non-profit housing was built under joint federal and provincial funding.

ISSUE: DETERMINING IF A UNIT IS COVERED BY RENT CONTROL

A secondary issue for discussion under the scope of any rent control legislation is how to determine if a unit is covered by rent control and if it is covered, what the rent is for the unit.

BACKGROUND

There may be some cases where a tenant, a landlord or the government desires to obtain a decision on whether a rental unit is covered by rent control. For example, a landlord may be uncertain about whether a flat in a rooming house is covered; or a tenant may want to know if a basement apartment in an owner's house is protected by rent control. There could also be instances where the government would want to refer a situation for determination of whether a particular rental unit was covered by the legislation. If a unit is determined to be covered, there should be an expeditious way of determining the rent level that is recognized under the rent control system.

PREFERRED APPROACH FOR CONSULTATION

The preferred approach is to allow an application by a landlord, tenant or the government, both to determine if a unit is covered by rent control and what the rent level is for the unit. This preferred approach differs from the current system in that it combines the application to determine coverage with that to determine the rent level, for greater speed of decision and less complexity.

4.2 ANNUAL RENT INCREASES

ISSUE: BASIS OF ANNUAL RENT INCREASE

A system of rent control requires some measure to base annual rent increases on so landlords know what they can charge and tenants can plan for rent increases. The issue is, what should be the basis of that annual increase?

BACKGROUND

Under the Residential Rent Regulation Act, 1986, the maximum rent for a unit can be increased only once in a 12-month period based on an annual "guideline" percentage. The guideline is determined according to a formula which takes into account the typical costs of operating a residential rental building which are averaged over a three year period. The guideline was 4.6% in 1990 and is 5.4% in 1991.

The Residential Premises Rent Review Act, 1975 and the Residential Tenancies Act, 1979 preceded the current legislation and featured a fixed guideline. The guideline ranged from 8 per cent in 1975-77 to 6 per cent in 1978 through 1985 and finally, 4 per cent until the end of 1986.

One criticism of the current system is that the basis for the current annual rent increase is too complicated and not well understood. The system utilizes a flexible guideline approach based on two indices: the *Residential Complex Cost Index* (RCCI) which fluctuates annually in response to changes in the *Building Operating Cost Index* (BOCI). BOCI represents typical cost increases experienced by landlords averaged over three years. Many of these costs are calculated based on the Consumer Price Index (CPI). The guideline is at least 2% in any year. Added to it is 2/3 of the cost of the Building Operating Cost Index. The 2 per cent component is intended to cover factors such as minor capital expenditures (1%) and profit (1%) which are not part of the Building Operating Cost Index.

There is also some debate about what the current guideline is meant to account for. Some feel that the guideline allows for ongoing maintenance, capital improvements and the landlord's profit. Others feel that the guideline allows no margin for capital repairs and barely covers ongoing maintenance. What a guideline increase does cover will vary from building to building depending upon the expertise and efficiency of the individual landlord and the condition of the building.

There are two policy principles that are relevant in designing a guideline: there should be less complexity in the legislation and administration of rent regulation while ensuring greater certainty about rent increases for tenants and landlords. In some cases, considerations as to complexity may need to be balanced against the desire of a greater certainty of result.

OPTIONS CONSIDERED

A rent increase guideline can either be fixed or flexible. If fixed, the guideline would not vary for any reason. This system would be simple but if the guideline was significantly more than inflation, it would disadvantage tenants. If it were significantly less than inflation, the ability of landlords to maintain rental buildings would be affected. A flexible guideline would be one that varies annually, based on some indices of changing costs. The current system is a flexible guideline as would be any guideline linked to the Consumer Price Index (CPI).

There is the option of retaining the current system which utilizes a flexible guideline based on RCCI and BOCI, which is linked to inflation. BOCI represents typical cost increases experienced by landlords, averaged over three years. The three year moving average feature smooths the impact of a significant increase of any one component cost in a particular year thereby compressing the impact of inflation on rent increases. The system, however, has been criticised as too complex and not well understood by tenants. As well, the RCCI approach produces fractional increases such as 5.4%, making it more difficult to calculate rent changes than fully rounded percentage increases such as 5%.

A further option could be to design a new rent control index to take into account several factors such as inflation on building operating costs. This would be essentially a simplified version of RCCI and BOCI, retaining the ability to smooth out changes over time. The appropriate percentage base could be influenced by decisions made in the capital and maintenance area.

Another approach is to use the Consumer Price Index (CPI) produced monthly by Statistics Canada. The CPI is a measure of inflation that tracks the increase in cost of a standardized "basket" of goods and services consumed by the typical Canadian. Generally, wage increases follow the rate of inflation. A rent index or guideline that is linked to inflation will generally follow that rate at which tenant incomes increase. The Consumer Price Index for Ontario or the CPI for Housing, rather than the CPI-Canada could also be used as the basis for the guideline. Some of the drawbacks

to this option are that the CPI is not necessarily representative of the actual costs experienced in maintaining a building. For example, a major portion of the Consumer Price Index is based on food. A Housing-related CPI can be somewhat circular in that the cost of rents in rental housing would be used to form the guideline. As well, CPI is a more volatile index and moves more quickly over time than a custom-designed rental index.

The following chart shows how various CPI-related indices would have affected rent increases in comparison to the RCCI-BOCI guideline and the actual statutory guidelines in place in the 1975-1985 periods. The chart indicates that in periods of low inflation, rent increases are higher than inflation under a customized rental index and in periods of higher inflation, they tend to be lower.

COMPARISON OF CPI AND GUIDELINE BASES FOR RENT INCREASES

Year	CPI (Can.) (%)	CPI, (Can.) averaged over 3 years (%)	2/3 CPI related (RCCI) averaged over 3 years + 2% (%)	Actual Guideline (%)
1975	10.8	6.2	6.1	8.0
1976	7.5	8.7	7.8	8.0
1977	8.0	10.2	8.8	8.0
1978	9.0	9.3	8.2	6.0
1979	9.1	8.4	7.6	6.0
1980	10.2	8.2	7.5	6.0
1981	12.4	9.0	8.0	6.0
1982	10.9	9.9	8.6	6.0
1983	5.7	10.9	9.3	6.0
1984	4.4	10.8	9.2	6.0
1985	3.9	9.7	8.5	6.0
1986	4.2	6.9	6.6	4.0
1987	4.4	4.8	5.2	5.2
1988	4.0	4.0	4.7	4.7
1989	5.0	3.9	4.6	4.6
1990	4.7	3.9	4.6	4.6
1991	5.8	5.1	5.4	5.4

Yet another approach would be special category-based guidelines designed on the basis of characteristics intended to incorporate the different operating costs associated with different types of buildings. For example, a specific guideline could apply based on building age (e.g. buildings built pre-1960). Other categories could include building condition, building type (e.g. highrise, lowrise, townhouses). Another type of guideline for annual rent increases could be regional, recognizing different cost structures in different parts of Ontario. Special guidelines can recognize differences amongst rental buildings but increase complexity and treat tenants differently according to factors they may not view as relevant.

PREFERRED APPROACH FOR CONSULTATION

The preferred approach is to design a flexible rent control guideline with a cap to prevent an increase that is too high in any year. This approach would cap the inflation-based rent-controlled guideline to reduce the chance of high short-term fluctuations that might arise. For example, the rent control guideline could be based on inflationary costs in rental accommodation averaged over a period of time, up to a maximum percentage. If inflation increased higher than the percentage amount then the cap would hold annual rent increases at the identified ceiling. In the 1981 to 1982 period, the CPI increased to slightly over 12 per cent following which the federal government instituted the "6 & 5 Program" of wage restraints. If a guideline had a less than 12% cap for example, rent increases would have topped out at the cap rather than following inflation higher. While this approach certainly provides greater certainty for tenants, it does have the disadvantage that landlords might not recover costs during periods of high inflation. Provisions for three-year averaging do eventually bring such costs forward over time, in the rent control guideline.

ISSUE: TIMING OF ANNUAL RENT INCREASES

An additional issue to be explored is whether there should be a common rent increase date for rental units.

BACKGROUND

One problem with the current system is that a new tenant has difficulty determining when the last legal rent increase occurred. As well, tenants in the same complex often experience different rent increase dates while the entire building has a first effective date for an ordered rent increase on yet another date. Differing dates increase complexity and uncertainty and permit more illegal rent taking when units are vacated.

OPTIONS CONSIDERED

One approach is to retain the current method of adjusting unit rents on the anniversary date for the individual unit. The main advantage of retaining the existing system is that there would be no transitional problems. However, the shortcomings of this system for tenants are well known and include widely varying anniversary dates within a building creating confusion and uncertainty. Varying dates within a residential complex mean that some landlords may illegally increase rents when a unit turns over, as the new tenant has difficulty determining the last rent increase for that particular unit. This problem could be resolved by requiring one rent increase date for a residential complex.

Another option could be a province-wide rent date. For example, June 1st could be the anniversary date for every rental unit in the province. A notice of the guideline increase and its effective date could be widely publicized providing greater certainty to both tenants and landlords. If the landlord did not take an increase, the rent would hold until the next anniversary date. There are two disadvantages to this approach: the tendency for tenants to move on anniversary dates potentially creating problems for the moving industry similar to the situation in Quebec; and the concentration of the administrative workload for a rent control system at one point in the year. Such a system would also require complex transitional provisions.

One of the important trade-offs in designing a new rent control system is to assess the possible administrative workload implications. A common rent date can be planned for and workloads adjusted accordingly. A variation on the province-wide option could be to institute regional rent dates to help smooth the administrative workload. Similarly, a system could be designed to split the administrative workload so that large buildings of 7 units and over, for example, would have a common anniversary date of say October 1st, while smaller buildings of 6 and under would have a June 1st anniversary date.

PREFERRED APPROACH FOR CONSULTATION

The preferred approach is a common rent date for each residential rental complex so that there would be a single and common rent increase anniversary date for every unit in a complex. This approach would create greater certainty for tenants and landlords while reducing the complexity of the current system. Considerable efforts would be made to inform the public of these changes. There would need to be transitional rules in order to align the current dates of the rent review system with a common building date under rent control and to provide for delayed increases.

4.3 INCREASES ABOVE THE GUIDELINE

ISSUE: FACTORS JUSTIFYING INCREASES ABOVE THE ANNUAL GUIDELINE

An important issue for discussion in developing the rent control system is whether increases above the annual "guideline" increase would be permitted and if so, for what factors.

BACKGROUND

Under previous rent review systems, landlords could make applications to increase rents above the annual guideline, usually for all units in the building. Landlords could justify increases based on a specific list of costs and losses: operating costs, capital expenditures, financing costs, financial loss, economic loss, hardship relief, changes in maintenance standards, changes in services and facilities and for miscellaneous items. In addition, rents for similar rental units in the building could be 'equalized', that is, increased and decreased among units without changing the overall revenue of the building.

Under the Residential Rent Regulation Act, 1986, there were limits on the amount that could be passed through in any one year for certain costs only. A mechanism was provided so that rent increases justified in an order for financial and economic losses and for equalization could be phased in over a number of years without making another application. For operating costs, the RRRA provided an operating cost allowance based on the guideline, and for significant changes in specific operating costs, an allowance was available for "extraordinary operating costs". Where capital expenditures justified the rent increase, the operating cost allowance was lowered by one per cent to reflect recognition of minor capital expenditures available within the guideline. The RRRA also recognized a cost pass through in rent increases of an amortized amount for capital expenditures (see next part).

The difficulty for the policy-maker is to balance the need to protect tenants from unforeseen and unexpected rent increases while recognizing that landlords will experience some extraordinary cost increases which are beyond their ability to control. A fixed rent index with no allowable increases would ensure that tenants will know what their rent will be in the next year. At the same time landlords may experience significant cost increases, due to circumstances beyond their control such as regional differences in hydro or municipal taxes. Unless such changes were widespread, they might never be reflected in the rent control guideline which would

be based on general inflationary changes. This may be particularly a problem if there is a province-wide rather than regional guideline, although a province-wide guideline is currently favoured as reducing complexity.

OPTIONS CONSIDERED

Several major options for cost increases above guideline were reviewed including:

- extraordinary operating costs;
- financial loss, economic loss or hardship relief;
- interest rate changes;
- other charges;
- equalization; and
- allowance for chronically depressed rents.

Ultimate cap on rent increases -- if any increase above the guideline is permitted, another option is to limit the total amount rent can be increased by a "cap".

ISSUE: EXTRAORDINARY OPERATING COSTS

The first major cost category for consideration is extraordinary operating costs. There are several possible approaches to allowing for these costs if it is decided that increases in operating costs should result in above-guideline rent increases. If any increase is permitted, consideration should be given to whether that increase should be capped in any one year.

BACKGROUND

Under the **RRRA** rent increases for 13 items are allowed if they increase by more than 50 per cent of the amount recognized within the guideline or they increase by more than 1% of revenue. The 13 items are: municipal taxes, heating, hydro, water, insurance, cablevision, accounting and legal costs, bad debts, maintenance,

superintendent's salary, management and administrative overhead and miscellaneous items. The criticisms of this method generally revolve around the belief that the basic guideline should adequately cover these cost items or that these costs could be manipulated. As well, tenants do not have ready access to a landlord's cost information, making it more difficult for them to prove that there had been a decrease in costs and there is the potential for large rent increases based on discretionary items such as maintenance costs or miscellaneous costs.

OPTIONS CONSIDERED

One variation on this approach is to limit the list of extraordinary items to those over which a landlord has little control such as municipal taxes, heating, hydro or water. Generally, these are cost items that could have significant regional variations that might not be adequately captured by a province-wide guideline. To illustrate, heating oil costs in Sault Ste. Marie might show an increase of 16 per cent compared to 6 per cent in St. Catharines because of differences in transportation costs and a longer heating season.

Still another approach is to revisit the system used under the Residential Tenancies Act where any operating cost increase that was greater than the previous year would be considered but the landlord had to demonstrate all costs including reductions in costs. While the onus is on the landlord to demonstrate all costs in the operation of a building, it increases the complexity and time requirements for a rent control system.

Finally, some have suggested that extraordinary operating costs should be allowed above the guideline only if they were agreed to by tenants. To illustrate, where tenants agree to a new or additional service such as increased security measures, a mechanism could be provided that would allow for these additional costs to be passed through to rent. Some are concerned that this could potentially lead to coercion.

Another option would be to permit increases above the guideline if the costs are attributed to new or improved maintenance services.

ISSUE: CONSULTANT'S AND OTHER FEES OR COSTS

The issue is whether fees that have been passed through under the **RRRA**, such as rent review consultants' fees, mortgage renewal fees, mortgage insurance fees or appraisal fees and excess vacancy losses should be passed through under the rent control system. Under the **RRRA**, these fees and costs were often limited or allowed only on an amortized basis.

OPTIONS CONSIDERED

The options to deal with these types of fees and costs come down to a matter of retaining the **RRRA** approach or not allowing the pass through of these items. Some of these items relate to service costs for larger financial items that are not being suggested for pass through (e.g., mortgage renewal fees). Other items such as consultants' fees have been criticized by tenants as rewarding landlords for making rent review applications while at the same time the tenants' costs of defending against such proposed increases have not been considered.

ISSUE: FINANCIAL LOSS, ECONOMIC LOSS OR HARDSHIP RELIEF

A third area that has been the subject of above-guideline increases under rent review systems is financial loss, economic loss or hardship relief.

BACKGROUND

These provisions represent one of the most contentious areas from a tenant perspective because they result in a pass through of a landlord's costs of acquiring or developing a property. Many feel that this has fostered the rapid turnover or resale at higher prices of rental buildings at the expense of tenants who eventually face economic eviction because of higher rents. Landlords argue that monies are needed to provide for purchase costs if rental properties are sold upon retirement or their leaving the business.

The effect of these provisions has been to inflate the sale prices of apartment buildings based on the potential for greater rent increases. Tenants argue that, if an investor looks at acquiring an existing business, it is understood that there will be certain costs associated with making that investment that can only be recouped

over the long run. Very few business decisions are taken with the view that a business will be bought today and prices increased tomorrow to cover the costs of making that investment.

OPTIONS CONSIDERED

The current situation could be retained in part or in whole. Part of the rationale for these provisions was to allow economic loss that would provide for a rate of return above a landlord's break-even position. In other words, a rate of return would be permitted if the guideline amount was insufficient for a landlord to break-even and/or make a small profit. This is aimed at those buildings constructed after 1975 by offering a rate of return that is comparable with alternative investments. Hardship relief of 2% above costs could be claimed for pre-1976 buildings.

A variation to this approach could be to adopt a similar approach but with increased limitations such as a longer period of phase in, permitting mortgages only up to a certain percentage of value, or requiring that a building had to have been owned for a specified period before these costs could be recognized. Consideration could be given to permitting financial loss where the loss is caused by the operating costs of the building exceeding revenue. The downside is that the recovery of these losses could continue to influence the market by inflating the sale price of the buildings. Tenants would still be contributing to a landlord's capital investment with no value added or improvement of service.

A final option is not to permit any pass through of financial loss, economic loss or hardship relief. Tenants would not bear the impact of the landlord's decision to sell. Financing costs would be recovered at sale and the system of rent control simplified.

ISSUE: INTEREST RATE CHANGES

The system under the **RRRA** allows for a pass through for interest rate changes (increases and decreases) based on mortgage financing of up to 85 per cent of acquisition costs. While this system permits a landlord to recover most interest rate changes and provides a mechanism to reduce rent increases due to decreases in interest rates, it has been criticised for being too complex and resulting in some very large rent increases.

OPTIONS CONSIDERED

One variation on this approach is to limit the amount of mortgage financing that is recognized for changes in interest rates. Recognizing that market interest rate changes are beyond an individual's control, the system could permit a pass through of interest rate changes upon mortgage renewal or refinancing of arm's length financing based on mortgage financing of up to 75 per cent of acquisition costs. This would recognize interest rate changes that are experienced by an average homeowner.

A further variation is to permit a pass through limited only to interest, rather than the current blend of interest and principal payments. This would have the effect of relieving tenants of the burden of the capital investment or increases in landlord's equity.

There is also the option of using any of the above approaches with a cap on how much could be passed through in any one year.

Finally, there is the option of not allowing any interest rate changes. Landlords who are faced with higher interest rate charges on mortgage renewal would have to find additional equity or arrange longer amortization periods with lenders. Additional financing costs would not be factored into rents.

ISSUE: EQUALIZATION

The issue is whether to retain the ability to equalize dissimilar rents for similar rental units.

BACKGROUND

Under the **RRRA** an application may be made for equalization of rents in a building where rents for similar units are different. The process results in an equalization of rents within the complex but no change in the overall rental revenue for the landlord. Some tenants' rents will increase while others will decrease. The maximum amount that rent could increase in any year due to equalization was 5%. To achieve full equalization, the adjustments could be phased in.

OPTIONS CONSIDERED

Equalization of dissimilar rents in similar rental units could be continued. Those paying above-average rents for similar units would have their rent reduced and others with below-average rents would have their rents increased. However, some of the variations in rents may have occurred simply because of variations that existed at the time the rental unit became covered by rent regulation and that variation became wider as the annual guidelines compounded on the original base rent. Others argue that maintaining the current approach will only legitimize past illegal rent increases by bringing lawful rents to a higher level through the averaging process of equalization.

Another variation to the current system is to allow equalization but with a phase in of increases capped at a certain percentage each year. Finally, there is the option of not allowing equalization as it increases complexity and disputes amongst tenants.

ISSUE: ALLOWANCE FOR CHRONICALLY DEPRESSED RENTS

BACKGROUND

The "chronically depressed rent" notion is that some landlords require a mechanism to bring rents up to a market level because their rents are thought to be below market levels. Partially, this condition could arise because of the different versions of rent regulation. For example, the Residential Tenancies Act did not cover all rental units in Ontario. As a result, landlords in buildings constructed since 1975 were able to charge higher rents simply because of the date their building was built and not because of the value of the service provided. Landlords of buildings built before 1976 perceive that they are being forced to charge rents less than what the market would have otherwise permitted. Another factor was that some landlords did not charge annual rent increases which, prior to the RPRA, meant that the actual rent could not later be adjusted by guideline amounts. As a result, the reasoning continues, these landlords are suffering economic hardship and require some mechanism to adjust chronically depressed rents.

OPTIONS CONSIDERED

The options here are limited. The **RRRA** has provisions for this type of situation which were never proclaimed. Were they to be developed, they would require complex calculations to be workable. The remaining option is not to proceed with special provisions for these situations.

PREFERRED APPROACHES FOR CONSULTATION

The preferred approaches for discussion in relation to increases above the guideline include:

- in recognition of certain regional cost differences, rent increases above the guideline could be permitted if there were a significant increase in operating costs for municipal taxes, hydro, water and heating. To be eligible, a cost increase would have to be more than 50 per cent of that recognized in the guideline; there would be an overall cap on increases in any one year, similar to the overall guideline cap; and

- there should be no increase above the guideline for:

  - interest rate changes
  - equalization
  - financial loss
  - hardship relief
  - economic loss
  - catch up for below market rents
  - maintenance costs
  - consultants' and other fees.

4.4 CAPITAL EXPENDITURES

BACKGROUND

Ontario's rental stock is aging. 65% of the stock is 20 years old or more and this proportion is expected to grow as there have been smaller additions to the rental stock since the late 1970's. Data indicate that the need for major repair is closely linked to the age of the rental stock. It is estimated that by the year 2000, between 188,000 and 235,000 rental units could be in need of major repair. The cost of doing such repairs was estimated as between $4 and $7 billion in 1990 dollars. In 1990, the rent paid in Ontario was about $8 billion.

Under previous rent review systems, the costs of major repairs, renovations, replacements or new equipment and facilities could be passed through into rent increases. The costs were amortized with interest over the anticipated useful life of the expenditure. Under the **RRRA**, management and administrative allowances could also be included in the pass through. As well, under the **RRRA**, for capital expenditures which had been replaced, the initial pass through amount (allowed on an order as of August 1, 1985) was deducted from the replacement so that only additional costs were added into the rent base.

Under these systems there was no restriction on the amount of capital expenditures that could be passed through in a particular year. However under the **RRRA**, only part or none of a capital expenditure allowance could be passed through if the work was as a result of the landlord's "ongoing deliberate neglect". Under 1990 regulations, certain capital expenditure allowances were reduced if the landlord had failed to notify tenants in advance of planned work and to obtain tenant consent for certain ensuite work.

To assist in planning major work, applications could be made for a conditional order that would predetermine the amount that could be passed through into rent if the proposed capital expenditures were actually done and a subsequent rent review application was made. The **RRRA** also provided for joint landlord and tenant applications primarily for ensuite capital expenditures for individual or small groups of rental units.

This method of recognizing capital expenditures has resulted in excessive increases by some landlords who have used the provisions to increase rents for capital expenditure work that tenants have perceived as unnecessary or unwanted.

Since 1987 the average ordered rent increase was 11.10%. In this, an average of 3.00% was due to capital expenditures. Individual orders could have resulted in much higher rent increases: about 2.06% have exceeded 30.00%.

A small random survey of rent review orders for pre-1976 buildings with capital expenditures was conducted by Ministry staff in 1989. The average ordered increase was 12.30% of which 7.46% was capital expenditures. About 5.00% resulted from "necessary" expenditures and about 2.50% resulted from "unnecessary" expenditures. The working definition of "unnecessary" included whole building replacement of appliances, kitchen counter-tops and cupboards, microwaves, lobby repairs, etc.

Landlords and tenants both acknowledge that there is a need for capital expenditure work to be performed to maintain adequate building standards and to extend the life of existing buildings. The challenge is to find an acceptable method which will encourage the necessary work to be done in a timely and efficient manner; to provide adequate funds to have such repairs done; and to provide sufficient flexibility that work of a more aesthetic or cosmetic nature can be done, yet without passing through large increases to tenants.

The Government wishes to obtain the widest possible range of proposals for addressing this important issue. Below is a range of options without indication of a preferred approach.

ISSUE: FUNDING CAPITAL EXPENDITURE WORK

Capital expenditures can be funded in a number of ways: recovery by passing through costs into rent increases above the guideline; a rate of return on a landlord's investment; increased guideline amounts; contributions to a reserve fund; government loans, guarantees or grants; or a combination of these. Not only are there several options to consider, but there is also the possibility of combining options. For example, were tenants and landlords of the view that a long term goal would be the establishment of rental building reserve funds, it may be that some transitional option would be favoured while the reserve funds were being built up over time. The various options are discussed below.

OPTIONS CONSIDERED

(a) Cost pass through into rents

A cost pass through system allows landlords to increase rents based on capital repair costs. Modifications to the method of cost pass through found in previous rent review systems could be introduced that would specifically remove the opportunities for abuse that have occurred.

Cost pass through can provide sufficient funding to ensure that individual buildings are maintained to minimum standards. A landlord's costs can be assessed and passed through under objective criteria.

Modifications could include tightening up the method of calculation such as adjusting amortization periods, and reducing interest rates and management allowances.

The pass through can also be linked to tenant approval for ensuite work that is not necessary, defining and allowing "necessary" work, and limiting the total amount that can be passed through in one year. This rent control cap could be the same as the cap for the rent control guideline. This can provide overall control but also some flexibility. (See the following section which deals with limitations on costs).

Large rent increases could still result and may encourage landlords to delay repairs until significant costs can be recovered. Without other limitations there is no certainty that "necessary" repairs will be done. The calculations and rules on cost pass through can add to administrative complexity and difficulty for tenants and small landlords to understand and comply.

(b) Rate of Return

A variation of the cost pass through principle would recognize a rate of return on a landlord's investment in capital works. Rather than amortizing costs with interest, an investment factor could be calculated by government and allowed as the cost pass through that results in rent increases.

Such a system is in place in Quebec where the government sets an adjustment factor based on the average return over the past twelve months on five year term investments plus a 1% premium to induce landlords to

maintain rental stock. The total capital expenditure cost is multiplied by the factor, which in 1990 was 13%, and the result is passed through into rents. Thus $1,300 would be passed through for a $10,000 roof repair.

This method can recognize sufficient funds to maintain existing buildings. It can be combined with tenant approval mechanisms and allowing "necessary" work. The calculation is much simpler than the amortized calculation and thus can be more easily understood by tenants and small landlords.

However the amount passed through can result in large rent increases unless capped and there is no certainty that "necessary" work is actually done.

(c) **Increased Guideline Amounts**

As stated previously, the annual rent increase guideline is calculated on the basis of a formula, the Residential Complex Cost Index. The formula includes about 1% for minor capital expenditures in addition to recognizing building operating cost changes.

A similar method of calculation could include increased amounts for capital expenditures rather than providing for a separate pass through for one-time capital expenditures. For example, the permitted rent increase for all rents could include 2% or 3% for capital expenditures.

The major benefit of this approach is that it would eliminate large rent increases in excess of the annual guideline. It would provide certainty for tenants and landlords who would know one-time large jumps in rent would not be permitted. It would avoid the administrative complexity of making applications, calculating increases and informing those affected. Landlords would receive annual "funding" to do capital expenditures.

However, unless there are improved enforcement mechanisms to ensure that necessary and desired work is done, there is no certainty that merely providing funding will result in the work being done. The amount available through guideline increases may not be sufficient for substantial work such as underground garages and thus there may not be sufficient incentive to do such work. Where such work is needed there could be increased pressure on other government programs such as the Low Rise Rehabilitation Program to fund these repairs.

Many landlords do not require additional money above guideline to properly manage their buildings; for them, the additional sum is not necessary, although all tenants would pay in annual increases, not just those tenants getting capital repairs. Currently about 17% of all rental units come to rent review for above guideline increases in any particular year. If the annual allowance for capital was built into the guideline, 100% of rental units would be affected.

(d) **Reserve Funds**

A reserve fund is money that would be set aside and accumulated for the purpose of making capital repairs.

Reserve funds encourage planning ahead for major capital expenditures. Past rent review systems on the other hand, have recognized costs only when the work was done. Rental buildings have not been required to maintain such funds: rent review and income tax rules would not recognize contributions to funds, and as well, rent revenues may not have been sufficient to allow setting aside significant monies to build up such funds.

Under the Condominium Act, developers are required to establish a capital reserve fund and condominium corporations are required to contribute annually to the fund. The purpose of the fund is to build up sufficient capital to pay for major repairs in the future. If the fund is insufficient to cover a major repair, the condominium corporation may assess individual owners additional amounts.

The concept of a reserve fund could be attached to rental buildings. Such a fund could be building-specific (i.e. for the use of the individual building only) or province-wide (i.e. for the use of all rental buildings in the province). Rents would be reserved in a trust fund by a landlord or the reserve fund could be built up through a tax on rents, requiring a specific proportion of rents or guideline increases to be put into the fund, or through government resources.

Building specific reserve funds could be created through regular contributions from rent. To establish such a fund, a special rent levy may be needed. The fund would belong to the building and would be passed on to new purchasers. Specific rules could be developed on what kind of repairs could be paid for

through the reserve fund. Mechanisms for tenant participation in such decisions could be developed.

Building specific funds thus would be used to address the capital repairs for the individual building. However, older buildings, those most in need of repair, will require significant funds to undertake those repairs. Newly established funds in older buildings will not have the money available to do major repairs. Newer buildings that are not presently in need of major repairs are the only buildings that would be able to successfully build up such a fund. As well, it will be difficult for some small buildings to build up a significant fund because of the low revenue base. There are about 430,000 units in buildings of under seven units. Mechanisms for ensuring that such funds are being held in trust and are properly used would be required.

It may be that moving to a reserve fund could occur over several years with some other approach during the interim period.

Province-wide reserve fund could be built up for the use of any rental building in the province. The most problematic aspect is in est blishing a fund large enough to serve the needs of all rental buildings. All buildings will be seeking ways to recover "their" portion of the fund. There will be considerable pressure to repair older buildings which represent the bulk of the rental stock. If a large enough fund is not made available immediately, restrictions would have to be placed on the availability of funds.

Newer buildings would be cross-subsidizing older buildings. Landlords who have maintained their buildings over the years will be cross-subsidizing those who have been neglectful. There may be a disincentive to properly maintain a building, if access to the fund is guaranteed only for those in most need of repair. If access is restricted, some necessary repairs may not be done, placing liability on the fund for ensuring proper maintenance.

Funding for a province-wide reserve fund could be created by infusion of government resources, a tax on building revenues or required contribution from rents. It is estimated that rents of about $8 billion are paid annually. If 1% of rent was placed in the fund $80 million would be the initial base. It is estimated that the cost of capital expenditures allowed in rent review orders in any particular year has not exceeded $122 million. Thus a 1% fund would not cover even the current level of repairs. If all buildings contribute to a fund, funding for all capital repairs would be sought from the fund. Very

significant government monies would be necessary to establish a government-funded program if sufficient revenues could not be generated from rents.

A province-wide reserve fund could be administered through municipalities and could be linked closely with municipal maintenance enforcement. Whether municipally or provincially administered there would be significant administrative costs for maintaining such a fund and deciding who received the benefits.

A reserve fund could be built up over time with some other approach to capital repairs during the period the fund was being built up.

(e) **Government Programs**

Currently the Low Rise Rehabilitation Program offers funding to landlords of small complexes to do renovation, major repairs and replacements to comply with municipal bylaws. Buildings must be at least 25 years old and be five storeys or less. The program is administered through municipalities. A forgivable loan is available, up to two-thirds of the cost, to a maximum of $5,000 per unit. As of January 23, 1991, about 19,000 units had been committed representing funding of $83,178,429. Additional funding will be provided in the 1991-92 fiscal year.

Government programs such as this can target those rental units most in need of repair or for special modifications for disabled occupants. The Low Rise program has been quite successful in rehabilitating older buildings. It is estimated that only one in six loan recipients made applications for rent increases above the guideline. Thus the major repairs have not, in most cases, resulted in high rent increases.

Given the estimate of units in need of major repair by the year 2000 and the cost of rehabilitating just 19,000 units under the Low Rise program to date, very substantial government resources would be needed to fund anticipated capital expenditure costs in all rental buildings. If such funding is not available, restrictions would be necessary on access to funds. Such restrictions could limit substantial necessary work (e.g. underground garages) or be an incentive for landlords to allow full deterioration to occur before doing repairs. Responsibility for maintaining existing housing stock would be shifted from landlords to the province.

ISSUE: LIMITATIONS ON CAPITAL EXPENDITURES

Access to funding, whether through the various cost pass through methods, reserve funds or government programs might be limited by various criteria. Below, three criteria for limiting the amount passed through or available in a particular year are discussed: distinction based on "necessary" capital repairs, tenant approval or veto mechanisms and limiting the total amount in one year by "capping" the rent increase or funds available. Another type of limitation concerns separating the allowance for capital expenditures from the base rent and removing it when the amortization period has expired.

OPTIONS CONSIDERED

(a) **Necessary Capital Expenditures**

Under the previous systems of rent review, tenants have been most concerned about capital expenditures that are unwanted and result in high rent increases, particularly luxury renovations that have made "affordable" accommodation, unaffordable. Individual tenants, however, are often most concerned about the level of repair within their own unit. Landlords argue that tenants are often unaware or do not appreciate when capital expenditures are necessary. They argue that, as landlords, they are concerned with the long term financial viability of their investment and that they have the right and responsibility to manage their own buildings which includes determining what repairs are necessary and when to do such repairs.

Thus a common definition of a "necessary" capital expenditure can be difficult to find. In general, "necessary" repairs would maintain the structural integrity of the building and ensure the health and safety of tenants. Necessary repairs could be defined as those required to meet minimum maintenance standards found in municipal bylaws or the provincial Maintenance Standard established by the Residential Rental Standards Board or by the Ontario Building Code, Fire Code, etc.

If only such repairs were allowed to be funded through the above methods, minimum health and safety standards could be met and the condition of existing stock would be ensured.

Mere compliance with minimum maintenance standards, however, may not encourage preventative maintenance or maintain current standards of

individual buildings. An alternate approach could characterize repairs, replacements or upgrades of existing items to similar standards as "necessary"; whereas upgrades that are a change from existing condition or new services or facilities could be "unnecessary".

Assuming that a definition of "necessary" repair could be established, the major structural repairs done under the definition could still result in large rent increases. There would be increased administrative difficulties in determining when repairs are "necessary", including increased municipal and provincial inspection and enforcement requirements.

(b) **Tenant Approval**

Rental units are tenants' homes. As such, tenants have an interest in how their homes are maintained and kept in a good state of repair. They also have privacy rights not to be disturbed without adequate notice when repairs are being done. Their sense of security is undermined when tenants are not informed about major repairs.

If capital expenditures are not technically "necessary" for the health and safety of occupants or to maintain structural integrity of the building, they may still be desired by tenants. For example, such repairs might be cosmetic repairs to common areas or the replacement of appliances and fixtures within a rental unit or even the provision of new or upgraded services and facilities. Tenant approval could be sought for such repairs on an individual unit basis or in the context of application over the whole building.

Alternatively, tenant approval could be required for all repairs, whether necessary or not. More information would be required to inform landlords and tenants about structural needs, health and safety requirements, cost, project planning and management.

A system of tenant approval could involve requiring landlords to inform tenants well in advance of proposed work and allowing tenants to decide on the repairs to be done in consultation with their landlords. Tenant participation in the decision making may involve all or a majority of tenants voting in support of a proposed capital expenditure. It may involve a joint application from the landlord and the tenants to have funding provided or costs passed through into rent increases.

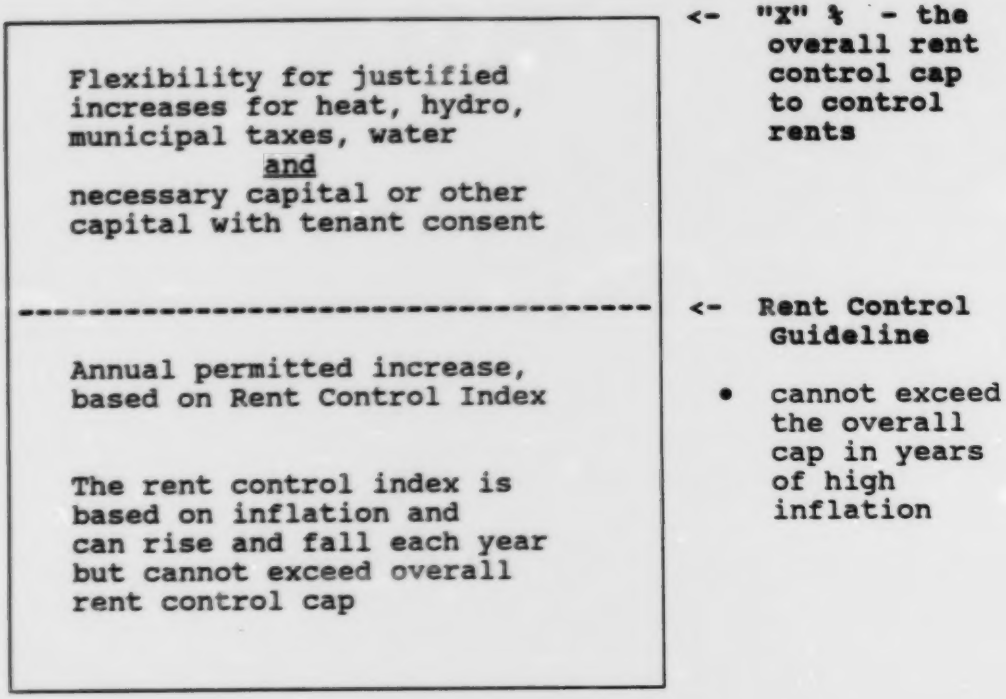
Mechanisms for tenant involvement in capital repair decisions can be administratively complex. For example, what level of tenant support is needed, how to deal with vacant units or tenants who have moved, how votes are to be recorded, etc. Protections would be necessary against misrepresentation, coercion, etc.

(c) **"Capping" Allowances**

To prevent excessive rent increases in a cost pass through system, allowances for capital expenditures could be limited or "capped". The amount which could be allowed in a particular year should be sufficient to allow the cost of a major capital repair to be recovered and yet not place an undue burden on tenants in the form of a rent increase. The level of the cap could be similar to the cap for the guideline or cap on the amount that could be passed through in rent increases for extraordinary operating cost. This could increase predictability and decrease complexity and control rents.

If the cost of a major capital expenditure such as a roof for a small building, could not be recovered in one year, there is an option of having the balance of the allowed cost carried forward into the following year. This would limit the impact in any one year but would not prevent necessary and substantial work to be done. However, a mechanism for "carry-forward" might encourage capital expenditures being "bunched" together in one year to maximize rent increases rather than planned expenditures spread over a number of years.

Any cap in this area could be the same as the overall rent control cap for other items. The concept is best illustrated as follows:


Flexibility for justified increases for heat, hydro, municipal taxes, water
and
necessary capital or other capital with tenant consent
<- "X" % - the overall rent control cap to control rents
<- Rent Control Guideline
• cannot exceed the overall cap in years of high inflation
Annual permitted increase, based on Rent Control Index
The rent control index is based on inflation and can rise and fall each year but cannot exceed overall rent control cap

(d) **Separation and Removal of Allowances for Capital Expenditures**

Under previous systems of rent review, capital expenditures were allowed by calculating an amortized amount that was added to the rent base. Once in the rent base, the capital expenditure allowance became part of the rent on which all future rent increases would be added. As guideline rent increases or later ordered increases were added, there was a compounding effect on the original capital expenditure allowance. Under the **RRRA**, when certain capital expenditures were replaced the original allowances could be deducted so that in effect, only the increased value of the replacement was added to the rent base. No adjustment was made for the compounding effect.

One method to address this is to separate the capital expenditure allowance from the rent base and prevent future guideline or other rent increases from being based on this allowance. As well, when the amortization period, or the

anticipated useful life of the capital expenditure had expired, the separate allowance for that capital expenditure could be deducted from the maximum rent a landlord could charge.

The major downside to this calculation is its complexity for both tenants and landlords. Each year when calculating the maximum rent that can be charged, the base rent would be increased by the guideline but the capital expenditure allowance would not. Detailed records must be kept annually of the separate calculations, as well as tracking the time when the capital expenditure allowance would be deducted from the maximum rent calculation. Capital expenditures by definition, are items that are spread over a number of years, many up to 15 or 20 years or more, so that it will be some time before the deductions would be made.

Landlords argue, because the cost recovery of the capital expenditure often exceeds the loan or financing arrangements for doing the work, they have had to "carry" the expenditure at a loss for a considerable time and that these further limitations will make it uneconomic to do such work. There are other implementation issues such as what to do with replacements that occur before the original amortization has expired, what to do upon sale, etc.

ISSUE: TRANSITION

If an acceptable approach to capital expenditures is identified, consideration could be given to whether the solution should apply to capital work commenced or completed prior to the new rent control legislation being put in place.

OPTIONS CONSIDERED

One option would be to apply any new approach to capital to work done before the new Rent Control Act was in place provided no other rent increase had been obtained for the work. Rent increases would be prospective. This approach would increase complexity and administrative burden and if tests of whether a repair was "necessary" or whether tenants consented were incorporated, there could be difficulties of proof.

Another approach would be to apply any rules on capital in the new rent control legislation to work started or completed after the introduction of any new rent control law. This could increase certainty as the proposed rules would be known, although the legislation could be changed in the process of clause-by-clause review. Such a system would carry less administrative burden than the previous option.

Other options would be to have any rules on capital expenditures apply only to work completed or to work commenced after the new rent control legislation was proclaimed or passed.

4.5 MAINTENANCE

ISSUE: HOW TO ENSURE ADEQUATE MAINTENANCE OF RENTAL PREMISES

BACKGROUND

Inadequate maintenance is one of the chief concerns of tenants across Ontario.

Under the Planning Act, municipalities may pass maintenance and occupancy bylaws to establish maintenance and property standards in their municipality. The enforcement of such bylaws is the responsibility of the municipality. Of the 792 municipalities in Ontario with the power to do so, 440 have such bylaws.

Under the **RRRA**, a Residential Rental Standards Board (the "Standards Board") was established to help ensure that minimum maintenance standards were met. Provincial Rental Housing Maintenance Standards were established for those areas in the province that did not have municipal maintenance bylaws that were adequate or adequately enforced. The Standards Board reviews municipal and other work orders and refers matters of substantial non-compliance with a substantial standard to the Ministry of Housing for determination whether a rent penalty should be imposed. Where the provincial maintenance standard is in effect, the Standards Board can order work done and refer the matter to the Ministry for determination of rent penalties if there is non-compliance. Rent penalties have consisted of temporarily preventing a landlord from collecting a rent increase or denying a rent increase where there was non-compliance with maintenance standards.

The current system of maintenance enforcement has three levels: municipal inspection and enforcement, Standards Board review for compliance, Ministry review for rent penalty. Simply going through this three-stage process has been quite slow. On average it has taken 8.5 months upon receipt of a work order by the Standards Board to issuance of a rent penalty by the Ministry. As well, rent penalty powers have been limited by statute.

OPTIONS CONSIDERED

Alternate systems of maintenance standards and enforcement include making it mandatory that municipalities have and enforce minimum maintenance standards. Where a municipality fails to meet provincial standards of enforcement, where it contracts with the province or where there is no municipal organization, a provincial

standard could be enforced. This would provide greater consistency and compliance across the province. However, this is a change from the current system where municipalities are not required to have such bylaws and can adjust enforcement to reflect community standards and conditions.

Another option would be to introduce a Code for Existing Buildings that would establish a province-wide maintenance standard and methods of enforcement. This would ensure greater consistency across the province but it would not reflect local variations and community standards. In fact such a standard may be higher than currently exists across the province and could require costly repairs and upgrades to achieve full compliance. Such a code would not necessarily be comprehensive: however, the full advantages of a consolidated and streamlined regulatory system for existing buildings could not be achieved unless all health and safety matters were included (e.g. fire, electrical, elevator, etc). A phased approach would be possible, starting with property standards and renovation requirements. There would be additional administrative costs and complexity in designing a comprehensive system for the whole province and delay in its implementation.

Last, options could be considered related to rent penalties. For example, there could be a power to reduce rents permanently or for a period of time where there is inadequate maintenance. A potential option could be to provide that where there is an outstanding municipal or provincial work order, no annual guideline increase may be taken. Some of these issues are discussed in the following section.

PREFERRED APPROACH FOR CONSULTATION

The preferred approach is to retain the functions of the Standards Board but that those functions be combined administratively with decisions on rent penalties. Thus there would continue to be a system of municipal bylaws that would have the ability to reflect and enforce community standards. To assist municipalities in enforcing their bylaws, changes could be made to provide more effective powers of entry and repair and an increased ability to recover the cost of repairs undertaken by the municipality on an emergency basis. Other legislation may have to be amended to achieve this. A model bylaw could be developed to assist municipalities in developing their own maintenance standards and enforcement policies. These options would not preclude the development of a Code for Existing Buildings which may in the long term be a desirable approach.

Where there are no such bylaws and enforcement, provincial standards would be determined and imposed. Enforcing municipal and provincial standards would be assisted through stronger rent penalties denying rent increases or reducing maximum rent where maintenance standards are not met.

Finally, fines could be imposed for failure to comply with municipal and provincial maintenance standards or for charging tenants for maintenance.

4.6 RENT REDUCTION

ISSUE: CHALLENGE TO INCREASES WITHIN THE GUIDELINE AND ILLEGAL RENTS

BACKGROUND

The issue for discussion is whether tenants should be allowed to challenge a rent increase taken within the guideline and for illegal rents. Under the current system of rent review, a tenant may apply to the government for an order that would reduce illegally charged rent and order a rebate of the illegal amounts paid. If the amount owing to the tenant exceeded $3,000, the matter had to be determined by the court. Landlords to whom the illegal amount had been paid were liable for repaying the monies owing either in a lump sum or by reducing future rent payments until the debt had been satisfied. If the landlord failed to pay the amount owing, the rent review order could be enforced through usual debt collection methods. Under the Residential Rent Regulation Act, 1986, illegal amounts paid before August 1, 1985 could not be recovered if the landlord had registered the rent on time with the Rent Registry.

A tenant could also dispute an intended guideline rent increase on specific grounds: for example, if there had been a deterioration in the standard of maintenance and repair, failure to maintain minimum maintenance standards, discontinuance or withdrawal of services and variation in the tenant's rent compared with similar rental units in the complex. These applications are made on an individual unit basis only and are made before the date the rent increase takes effect. If the tenant's application was based on variation in rent between rental units, the landlord had the option of making a application to equalize all dissimilar rents in the building.

OPTIONS CONSIDERED

The current system of tenant challenge to guideline increases could be continued. However, one of its drawbacks has been that it requires individual tenant application for each unit and determining if maintenance standards have changed.

A variation to the current approach then could be to provide for an application by an individual tenant, group of tenants or a majority of tenants to reduce the rents in the whole complex based on a failure to maintain maintenance standards, a change in services and facilities or significant operating cost decreases.

A second variation on this approach would allow for applications for rent reductions for other items such as capital expenditure costs no longer borne and financing costs no longer borne. Where a previous rent review order increased rent based on capital expenditures, and where the useful life or amortization period for that expenditure has expired, the rents could be reduced to reflect that the landlord is no longer experiencing a cost associated with the capital expenditure. Similarly, where an allowed rent increase was based on increases in interest rates on allowed financing costs, and those interest rates have since declined, the rents could be reduced to reflect the fact that the landlord is no longer experiencing those costs. This results in greater complexity and if applications from landlords for comparable costs above guideline are not permitted, an imbalance between landlord and tenant applications could be perceived.

There is also the option that tenants continue to be allowed to raise as a defence to a landlord's application for an increase above the guideline, the fact that there has been inadequate maintenance levels or a decrease in services and facilities. This would permit a reduction of the rent increase or rent when the landlord claims increases above guideline as under the current rent review provisions and is consistent with tenant ability to challenge a guideline increase. As with most of the discussion on levels or standards of maintenance, there could be difficulty in determining what levels of maintenance were in existence and how they have declined over time.

PREFERRED APPROACH FOR CONSULTATION

The preferred approach for consultation is to permit tenants to challenge guideline increases and have rents reduced for a single unit or for a whole building if there is a failure to meet adequate maintenance levels or if there has been or will be a decrease in services or facilities or a municipal tax reassessment downwards. As well, tenants should be able to bring forward their concerns about inadequate maintenance standards to reduce a landlord's proposed above-guideline rent increase.

ISSUE: AGREEMENT ON CHANGES TO MAXIMUM RENT

The issue is whether landlords and tenants should be able to agree to change maximum rent based on the provision of services and facilities.

BACKGROUND

Under the Residential Rent Regulation Act, 1986, tenants and landlords cannot contract out of their rights and obligations under the legislation. However, the legislation specifically provided that tenants and landlords can agree to increase or decrease the maximum rent where specific services and facilities have been added or discontinued. The services or facilities allowed are parking charges and cablevision charges only.

The current system allows parking and cablevision charges to be the subject of agreements. Especially where parking charges are concerned, there should be the ability for landlords and tenants to agree when a parking space is no longer needed or an additional space is needed. The restricted list of items that can be agreed upon provides protection for tenants from being forced into having unwanted services or deregulating the basic package of services offered in rent. However, many other items are often agreed upon between landlords and tenants which are not provided for in the legislation or regulations, such as air conditioners, lockers or plug-ins for block heaters.

OPTIONS CONSIDERED

Provision can be made for landlords and tenants to agree on the addition, withdrawal or reduction of services and facilities and to have the maximum rent adjusted accordingly.

One variation is to maintain the current approach but expand the list of items that can be agreed upon including items that have been established in a rent review order as being a separate charge for a service or facility available to any rental unit in the building.

In some smaller buildings, landlords and tenants often make special arrangements for appliances, expanded storage areas or provision of hydro. By setting out a list of eligible items in regulations, a tenant has some protection when negotiating the amount of the change in the rent, at the risk of adding a degree of complexity to the regulations.

As well the regulations would provide a method of calculating the appropriate charge for these changes to services if they are not set out in an order.

PREFERRED APPROACH FOR CONSULTATION

The preferred approach is to expand the current list of agreed upon charges from parking and cablevision to seasonal separate charges for air-conditioners and car plug-ins and for lockers and storage areas. Changes to maximum rent could be agreed upon, as set out in a rent control order or by regulation.

ISSUE: TENANT COMPENSATION FOR ILLEGAL RENTS CHARGED, KEY MONEY

BACKGROUND

The current system features the ability for a tenant to claim a rent rebate or a rent reduction if illegal rent has been collected. There is a six year limitation on this right except for circumstances where the period was shortened because the landlord registered the rents in the Rent Registry on time. Amounts owing can be deducted from future rent if a rebate is owed to an existing tenant. There are several criticisms of the current approach including the fact that the amount a tenant can claim in an application to the Minister is limited to $3,000 and that the landlord who collects illegal rents essentially obtains an interest free loan at the tenant's expense. Where the amount owing exceeds $3,000, the tenant may apply to the courts for the rebate.

OPTIONS CONSIDERED

An option is to maintain the current approach with some modifications including providing for interest on monies owing to the tenant and the extension of the monetary jurisdiction from $3,000 to $10,000.

Another option is to allow deductions from current rents rather than having tenants pursue their remedies of collection. Of course, this does not help tenants who have moved.

Tenants can also run into problems if a previous landlord had collected illegal rents. An option to overcome this problem would be to provide that the current landlord is liable for all illegal collections made by previous landlords from the same tenant. This would make collection by the tenant easier by shifting the burden of collection from the tenant to the current landlord but would be a problem for new landlords.

The current legislation makes it illegal to charge "key money" where prospective tenants are charged an under-the-table cash payment, often for drapes or furniture, in return for the opportunity to rent a unit. Those convicted of charging key money face a fine of up to $5,000 if an individual is involved, and up to $50,000 for corporations.

An option for key money would permit a tenant to be reimbursed for illegal monies paid to the landlord, through rebate applications or rent deductions from current rent.

PREFERRED APPROACHES FOR CONSULTATION

The preferred approaches for consultation are:

- to allow tenants to apply for rent rebates and rent reduction if illegal rents have been charged as well as having the ability to deduct amounts owed from future rent payments;

- interest be added to rebates and the amount that can be recovered through the rent control system be increased to $10,000;

- rebate applications be permitted in situations where key money offences have been committed by the landlord; and

- rent increases (or decreases) above the guideline could be permitted for a specific list of items and amount determined by regulation if changes to services and facilities are agreed to by tenants or set out by a rent control order. These items could include items such as lockers, cablevision or parking and seasonal charges for air conditioners and plug-ins for block heaters.

4.7 RENT INFORMATION

There are an estimated 1,052,000 privately owned rental units in Ontario. This represents about 84% of the rental stock, as follows:

- 620,000 units in complexes with more than six units; and
- about 432,000 units in smaller residential complexes.

Ontario's Rent Registry was established to record legal rents. It is not fully completed as of this date, although much of the computer system has been developed and over a million records of information have been entered. To date only complexes of seven or more units are required to register with the rent registry and most have done so.

The main features of the Rent Registry are:

- landlords of complexes containing seven or more rental units were required to file their 1985 rents in 1987;
- filing was encouraged by a combination of statutory incentives and enforcement penalties;
- landlords of smaller complexes may register, but will not be required to file 1985 rents until a date is prescribed;
- the public is to have full access to the rent information, although fees may be charged;
- notification of registered information is sent to the parties after which they may apply to resolve errors and rent legality disputes;
- the rent actually charged in July, 1985 is deemed legal if no party applies or motion made within a period of either 90 days or 2 years. These amounts become the first maximum rents; and
- the concept of "maximum rent" allows the registered rent to be updated in two ways:
  - by adding the guideline increase in effect each year, or

- by adding any rent increases allowed in a rent review order or phase in.

The Ministry may issue motions to raise illegality issues, depending on whether past illegalities are apparent from the registered information and existing orders.

ISSUE: MAINTAINING A RENT REGISTRY

Assuming that there should be a central repository of rent information, the first issue to be examined is what is the appropriate authority to maintain the registry. The options are fairly limited simply because of the need for statutory authority to compel landlords to register rent information.

OPTIONS CONSIDERED

One consideration was to enable tenant organizations to administer the rent information repository in the belief that tenant groups would have a better appreciation of tenants' information needs and could better provide rent information from a tenant perspective. However, a tenant-based rent registry would be difficult to organize and maintain on a province-wide basis from the point of view of incorporation, enforcement and objectivity in dispute resolution.

The current system administered by the Ministry of Housing on the other hand, features a large field organization of trained staff to give access to rent information and other program information uniformly across Ontario. In addition, the Government itself requires services from a rent repository for rent control and for the development of Government programs and policy.

PREFERRED APPROACH FOR CONSULTATION

The preferred approach for consultation purposes is to retain the government-administered Rent Registry.

ISSUE: RENT INFORMATION RECORDED

The issue is how authoritative the rent information recorded in the registry should be.

BACKGROUND

Presently the rent recorded in the Rent Registry as the **current** rent is given no legal significance in the Act unless it is set by an order. The registered 1985 rent is "deemed" legal if no party challenges the information in a notification. As such, the Registry can be viewed as a good source of information but not a repository of official "legal" rent.

OPTIONS CONSIDERED

One option is to have the rent repository provide tenants and landlords with rents updated from registration and orders. It would only estimate a current rent based on the information available, but could not state that the calculated rent was a lawful rent. This would be less costly to administer; however, tenants and landlords generally want certainty as to what the legal rent is, not just past rents or the estimated maximum rent.

Another approach is the legal rent approach - if it is in the Registry, it is deemed to be legal rent. The statute would deem the recorded rent to be lawfully chargeable. As such, the rent repository would be authoritative, regardless of other information that might be available. This approach would provide complete certainty as to what the legal rent is, which is what all parties want. There is, however, a greater potential for error or deeming illegal rents to be legal or legal rents to be illegal, as well as, the fact that some parties may be deprived of their rights to present facts or interpretations regarding legality of the rent.

A variation on this theme of the legal rent approach is that the rent in the registry is deemed to be the legal rent, but this would be a *rebuttable presumption*. This means that the Act would provide a presumption that rent recorded in the rent repository was the "maximum rent". It would be calculated on data that was not necessarily complete. As such, the presumption could be challenged and set aside if there was other rent information that led to a different conclusion concerning the "maximum rent". This has the advantage that parties are not deprived of the ability to make arguments that the lawful rent may be subject to other facts/interpretations.

PREFERRED APPROACH FOR CONSULTATION

The preferred approach for consultation is that the rent recorded in the Rent Registry be deemed to be the legal rent, but the legal or maximum rent presumption should be rebuttable.

ISSUE: INFORMATION RECORDED IN THE RENT REGISTRY

The issue is what rent information should be recorded on the registry.

BACKGROUND

Currently the base rent for applications and the rent which is the basis of later increases is the *maximum rent*. This is also the basis on which the Rent Registry is founded. A landlord may charge a lower rent than the maximum rent because of market conditions or philanthropic reasons such as wanting to maintain a long-standing elderly tenant. By charging a rent lower than the maximum rent, the landlord is not restricted to the lower amount. The rent may be increased to the maximum rent upon giving notice without an application as long as it is 12 months since the last increase. If the actual rent charged was the basis for the Registry, rent information would have to be filed each year.

In the current system if there is a change in service, for example, the withdrawal of parking, "relevant changes" are filed by the landlord on a voluntary basis or, in some cases, initiated by the Ministry. This affects the maximum rent. It is of concern because the Registry contains increasingly old information which undermines the accuracy of the information recorded. It is highly dependent on the Minister's powers to investigate for relevant changes in service.

OPTIONS CONSIDERED

The current Registry approach to maintaining maximum rent as the registered lawful rent, is to recalculate the amount twice each year; namely, deem a guideline increase on the anniversary date of the last increase and an increase on January 1st when the guideline changes. This takes account of annual guideline changes and possible changes of increase dates from year to year. However, this approach is difficult for

the public to understand and it does not necessarily reflect the current provision of services.

A different approach is to have maximum rent calculated by deeming a guideline increase on the anniversary date for the rental unit, whether the increase actually occurred on that date or not. This would be easier to explain to the public and would require less assistance for calculations. It has the disadvantage, however, of making some delayed increases illegal even though the applicable guideline increase was taken.

Another variation is to implement one rent increase for each unit in the Province on a single date each year and calculate maximum rent as of that date (see previous section on timing of annual increases). It has the advantage of creating a readily identifiable increase date so tenants can anticipate their rent increase and know with certainty what the increase date is when moving into a new unit. It would also make calculation of maximum rent less complicated while allowing the flexibility for reduced rents for market or philanthropic reasons. The only downside is that landlords may be disadvantaged if they miss the notice period for the anniversary date by losing the ability to take a rent increase in a one year period.

To address the issue of changing services, the principle of one-time filing could be maintained but penalties could be provided for failure to file "relevant change" information when a change in service occurs. This would provide more relevant maximum rent information. The onus would be on the landlord to file the correct information.

Alternatively, the landlord could be required to respond to an annual statement of the Ministry's recorded information. If the landlord did not respond, the information would be deemed to be correct as recorded. The disadvantages are that it would be more costly than the current system both for government to administer and for landlords and tenants who would have to respond to requests for information.

A further option is to allow tenants who wish to do so to file rent information. Alternatively, tenants could be given a form to complete rent information for their units. If this information differed from that filed by landlord, investigation and dispute resolution would be initiated.

PREFERRED APPROACH FOR CONSULTATION

The Rent Registry should record the maximum rent calculated on the anniversary date, not the actual rent. Of course, if a rent order is issued, it would record this. Landlords should be required to file initial rents and file any subsequent changes to services or number of units in a building with penalties for failing to do so.

ISSUE: REQUIREMENTS FOR FILING INFORMATION

BACKGROUND

The current system operates on the principle of a one-time mandatory filing of rent information by the landlord. The **RRRA** requires the July 1, 1985 rent to be filed. If the rent on that date is not known, permission could be obtained to file the earliest known rents. Buildings of 6 units or less have not been required to file July 1, 1985 rents although some have done so voluntarily or to have an application determined.

The first issue is whether the new legislation should require the smaller buildings to register the July 1, 1985 rents given the length of time that has elapsed, the degree of landlord and tenant turnover and record keeping of relatively unsophisticated landlords.

The second issue is when the rent information should be filed. For the smaller buildings that have not yet registered there are about 125,000 landlords who will be required to register as of a certain date, compared to about 11,000 who had to register in 1987. Undoubtedly, this will create some pressures such as large backlogs of processing, public education and enforcement. There is also the concern that some landlords may remove illegally zoned units from the market rather than register.

OPTIONS CONSIDERED

The current rules for registration could be retained. Landlords with 7 or more units would have for the most part, already registered. This would require all landlords of buildings with 6 units or less to file the July 1, 1985 rent on a specific filing date.

Another option is to provide express authority for landlords of smaller complexes to file actual 1990 rents where information for actual 1985 rents is not available

(to be certified by a landlord affidavit) and there is no 1985 or later Order. If the landlords do not have even the 1990 rent information, they would have to establish by application that they had made all reasonable efforts to obtain that information. Tenants could also provide the 1985 rent actually charged as a response to the notification, in which case it would be accepted if the landlord had filed a later rent. This approach could provide a greater incentive to file and complete the process quickly. However, it could provide less protection for some tenants and is not consistent with the starting point for maximum rent in the larger buildings.

As well there could be two stages of small building registration -- an early stage for 3 to 6 unit buildings; and a later stage for 1 and 2 unit complexes, including individually owned condominiums. For example, registration of 3 to 6 unit buildings within six months after the new Act comes into effect and of 1 and 2 unit buildings within eighteen months after the Act comes into effect. There might be a small risk of confusion for those landlords on the margin with 2 or 3 units, as well as delays in providing protection to tenants in those units.

PREFERRED APPROACH FOR CONSULTATION

The preferred approach is that landlords of buildings with seven or more units be required to record 1985 rents and this requirement should be carried forward from the current law. Landlords of buildings with six units or less should provide 1990 rent information unless information on rent in 1985 to 1990 exists. Filing for these smaller buildings would be required on a staggered basis over a period of six to eighteen months from proclamation of the rent control legislation. A notice of registered rent information should be given on request to tenants and landlords to verify the landlord's first filing; and given to tenants and landlords on a discretionary basis for verification purposes.

ISSUE: INCENTIVES OR PENALTIES TO ENCOURAGE REGISTRATION

The issue is how to encourage the registration of smaller buildings.

OPTIONS CONSIDERED

For any new registration scheme, and to make it consistent with landlords who had to register in 1987, there could be a penalty for late filing such as loss of ability to collect a rent increase until registration is complete. This should delay both actual and maximum rent increases for the landlord.

It is also possible to have an option of prosecuting landlords who failed to file rent information by the prescribed date. This would generally be done after persuasion and other remedies had been attempted. To be effective, such offences would have to be continuing in nature.

To encourage filing by landlords of small buildings, there could be an incentive to register such as limiting the liability for any rebate to a two year period prior to the mandatory filing date. Although it would be consistent with the approach in 1987, it would only serve to sanction illegal rents and diminish protection for tenants.

PREFERRED APPROACH FOR CONSULTATION

For the purpose of discussion, it is proposed that late filing penalties be increased to include not only non-collection of guideline increases but also a fine for failing to register on time and the offence of not filing required information be retained and the offence to continue until the information is filed.

4.8 DECISION-MAKING MECHANISMS AND ADMINISTRATIVE STRUCTURE

BACKGROUND

Rent review was introduced in Ontario in 1975 as part of the province's response to wage and price control. The Residential Premises Rent Review Act (RPRRA) was to expire on August 1, 1977. It permitted rent increases up to 8% without a hearing. For above guideline increases, a landlord's increased operating costs, capital expenditures and financial loss were reviewed. A hearing was conducted by a Rent Review Officer who had powers of a Commission, under Part II of the Public Inquiries Act, 1974. Appeals were permitted to a separate Board which held a second level hearing before a two member panel, one of whom was a representative of tenants and the other of landlords.

In 1979, the Residential Tenancies Act (RTA) came into force. The intent of the Act was to consolidate rent review and residential landlord and tenant matters under one statute administered by a tribunal. The provisions incorporating the landlord and tenant legislation were struck down by the Supreme Court of Canada. The rent review provisions were brought into force and administered through the Residential Tenancy Commission.

Applications for above guideline increases were made to determine rent increases for the whole building on similar grounds as found under the previous legislation. For tenants, the Act encouraged mediation of disputed issues and an attempt was made to settle tenant applications without a hearing. A single commissioner conducted hearings under the Statutory Powers Procedures Act. Appeals were made to three person panels.

The Residential Rent Regulation Act, 1986 (RRRA) came into force upon advice from landlords and tenants on the Rent Review Advisory Committee. The decision-making structure was changed to a system intended to be less adversarial, more consistent and more streamlined. Rent determinations are made at the initial level through an administrative review by Ministry staff on behalf of the Minister of Housing. Initial level decisions can be appealed to the Rent Review Hearings Board. The Board conducts hearings under the Statutory Powers Procedure Act on all issues raised on the initial applications. Maintenance standards are established and reviewed by a separate Residential Rental Standards Board.

In all of these systems, further appeals on matters of law could be made to the courts.

ISSUE: DISPUTE RESOLUTION SYSTEM

Decisions on rents are both adversarial (tenants and landlords have very different interests) and technical (determinations involving financial information and maintenance standards). Rent determinations have been made through various mechanisms from administrative review to quasi-judicial hearings. In any system, mechanisms are needed to ensure that the views and submissions of all parties are taken into account and objectively assessed. The first issue is to decide what dispute resolution system is appropriate in these kinds of disputes.

OPTIONS CONSIDERED

As mentioned above, under the current system of rent review, decisions are made administratively on behalf of the Minister at the initial level with an appeal to an independent board to hear all issues raised on the application and further appeal on matters of law to the courts. This system can be expeditious if it is adequately staffed and is not hampered by an immediate and large backlog. At the administrative level, uncontroversial or technical matters can be dealt with consistently and yet provide access across the province to the decision maker. Controversial matters can be dealt with more formally at a hearing with the ability to test credibility and to compel evidence.

However, the current system has been criticized particularly by tenants as being too complex. Many tenants do not feel comfortable having to make lengthy written submissions and do not feel that their concerns have been adequately addressed in the technical "paper" review. Complexity at both levels encourages the use of professional consultants which tenants often are not able to afford. The separate appeal body has developed different policy approaches leading to decisions inconsistent with the initial level. Finally, the system creates the fiction that the Minister of Housing decides each case, when in fact the decisions are made by staff and appointed members, which leads to confusion and somewhat misplaced accountability.

A modified administrative review with quasi-judicial appeal system could alleviate some of these concerns. For example, rent decisions could be made by a separate

agency under the direction of a Superintendent or Director of Rents with appeal to a separate Board for hearing before one member. Such as system may not address the concern that an administrative review discourages tenant involvement.

The two separate bodies could alternately be integrated into one tribunal with initial and appeal levels. By having hearings at both levels there is an open forum to encourage landlord and tenant participation. Independent decision makers can exercise greater discretion with regard to individual fact situations and they are further removed from the perception of political interference. With sufficient staff and resources such a system can be expeditious, with only controversial matters being appealed. However, hearings can be intimidating and tend to be formal and protracted. Without a separation between the two levels there may be a perception that appeals would not be thoroughly reviewed. Too much discretion can lead to inconsistent decisions which undermines the ability of both landlords and tenants to rely on the system and its fairness.

To encourage full participation, hearings could be available at both initial and appeal levels with a separation of the tribunals. This would ensure greater independence between the levels but can also lead to greater inconsistency. Separate bodies also tend to increase administrative cost and complexity.

Finally, the two tiered decision-making could be collapsed into one quasi-judicial hearing. Appeals to the courts could be limited to questions of law. This system would provide opportunity for both landlord and tenant participation. There would be greater certainty when a rent decision was made. If there is no appeal, it would be expeditious and streamlined. The numbers of appeals would be greatly reduced. There may be some perception that the decisions could be arbitrary without appeal on the facts. However, the experience under the **RRRA** indicates that on average the initial level decisions resulted in 11.10% rent increases compared with 11.17% on appeal, not a substantial difference. Because appeals would be to the courts, it will be more costly and time consuming to appeal. There would also be greater transitional problems moving to a system that is so different from the current system.

To improve the cost-effectiveness of the rent regulation system there could be greater cost recovery through fees. Landlords and tenants would be charged application fees and fees to obtain rent information. The amount of the fees would vary depending on the type of application or amount of information requested. Such fees could discourage frivolous applications and thus reduce workload. If the level of fees was too high they could also discourage legitimate applications especially from tenants and small landlords. To date rent regulation has not been viewed as

a service that landlords or tenants have wanted to pay for. The collection and administration of fees would add administrative complexity.

PREFERRED APPROACH FOR CONSULTATION

Despite transitional costs, the preferred approach is a system where rent decisions are resolved at a hearing with appeals to the courts limited to questions of law. This approach allows greater participation by those affected and can provide a relatively expeditious and certain decision-making process. To support the administration of the system, provision should be made for some cost recovery through fees.

ISSUE: ASSISTANCE TO LANDLORDS AND TENANTS BY IMPROVING THE PROCESS

For tenants and landlords who are affected by rent decisions, what assistance could be provided for greater participation in the process and for improvements in the process generally.

OPTIONS CONSIDERED

With a hearing-based process, tenants and landlords can be intimidated by the formality and may be unable to afford professional representation. Advisors could be provided specifically to represent landlords and other advisors to represent tenants. This would ensure more equal representation. Staff advisors would be most knowledgeable about the system and the technical details. However there is a perception that staff advisors would not be vigorous advocates and some question whether taxpayers should fund such activities. Such a system would also be quite costly.

Alternately there could be compulsory mediation or pre-hearings before matters are referred to the hearing or administrative review process. Such a session could explain the rules, flush out errors, improve documentation and focus parties on relevant issues. Agreements could be reached, avoiding more costly hearings. Even if matters are not settled at this stage, with better information and education the parties will be better prepared for the next stage. However, mediation may not be able to resolve applications where there are multiple issues and little common ground between parties. There can be inconsistent results for similar cases. Mediation for

every case will add another level in the process and add administrative cost and complexity. It can also lengthen the process.

Rather than compulsory mediation, voluntary mediation or pre-hearings could perform the information, education and narrowing of issues functions in appropriate cases. If resolution cannot be achieved, outstanding issues would be referred to the hearing or administrative review level. This system would be less confrontational and would have greater likelihood for resolution since parties would engage in mediation voluntarily. Landlords and tenants could participate at an early stage. However there can be inconsistent results if some parties agree and others proceed to the next stage. Mediation adds administrative cost and complexity. Even with voluntary participation, agreement will not always be possible.

In an earlier section, options for capital expenditures included determinations of whether the work was necessary or requiring tenant approval. A special conditional approval process for determining capital expenditures or new services could provide certainty before work is undertaken or services provided. When the work was done or service provided, the cost pass through into rent could be determined. This kind of process would address issues surrounding capital expenditures at an early stage and would encourage dialogue between landlords and tenants at a meaningful stage before work is commenced. Landlords and tenants could then plan ahead for the results of the capital expenditures. However, this process adds time and cost for landlords planning capital expenditures. It is not responsive to emergencies. Tenants could feel pressured by the landlord or other tenants to agree to an unknown capital expenditure or costly service.

To improve the quality of representation, greater control or limits could be placed on the compensation of agents charging contingency fees or by implementing a licensing scheme for agents. This could provide greater protection for unsophisticated parties by deterring abuse. The licensing procedure or tracking the method of payment can be administratively complex and costly for regulating a fairly small population.

To streamline multiple applications, the decision-maker could be given authority to merge applications for issues pertaining to individual units and the whole building for the same period. It would provide greater certainty in shorter time. This would avoid duplication and cost for the parties and the administration of the applications. Multiple applications can raise complex issues some of which may be subject to agreement, others applying to only some of the units, and some of the procedural rules may be complex.

To encourage greater dialogue between landlords and tenants on policy issues surrounding rent regulation, a Rent Control Advisory Committee could be created. As demonstrated by the Residential Rental Standards Board, landlord, tenant and municipal representatives working together have developed policy and procedures that have gained widespread acceptance. Such a group could act as a vehicle for monitoring trends and reflecting public opinion. Undoubtedly rent control will be controversial and it may be difficult for an advisory group made up of the major interest groups to reach consensus on important issues. To establish and implement an effective committee will add administrative cost.

PREFERRED APPROACH FOR CONSULTATION

The preferred approach for consultation is to provide funding to landlord and tenant groups but not create Ministry of Housing landlord and tenant advisors. As well, the process of hearings could be improved by:

- having the power to have discretionary mediation and prehearings;
- providing conditional order procedure for capital expenditures or new services to determine issues prior to work commencing; and
- granting authority to combine applications.

It is also suggested that a Rent Control Advisory Committee be created.

ISSUE: IMPROVED ENFORCEMENT

BACKGROUND

The **RRRA** provides for a number of offences that may be prosecuted by the Government or by private citizens and include:

- charging extra payments such as key money;
- failing to register rents when required to do so;
- failing to pay sums required by an order to be paid;
- failing to obey an order in some other sense;
- increasing rents by more than the permitted amount; and
- charging a sub-tenant more than the tenant pays.

All offences must be proved to have been knowingly committed by the offender.

Certain other offences may be necessary to carry out the new legislation or fill gaps that were found in the current law in addition to those mentioned elsewhere in this paper.

OPTIONS CONSIDERED

In the **RRRA**, it is an offence to **increase rent more than the amount permitted.** However, once an illegal increase is taken, the landlord is not considered to be committing an offence by charging illegal rent, even if he/she knows the rent is unlawful. Administratively, landlords could be given notice that they were charging an illegal rent as some landlords may be unaware of past illegal increases taken by previous owners of the building.

Currently it is not an offence for a landlord to harass a tenant who attempts to enforce rights under the RRRA, in contrast to the Landlord and Tenant Act or Rental Housing Protection Act, 1989, unless the landlord goes so far as to commit an offence under the Criminal Code. Harassment can be in the form of threatening termination of the tenancy or refusing maintenance. Such an offence would support tenants who are having trouble enforcing their rights under the rent control system.

Under the rent control system, the Ministry of Housing, or other administrative bodies may be given powers to inspect the residential complex or rental units. If so, there may be a need to make it an offence where a landlord, tenant, superintendent or any other person prevented an inspection.

The collection of "key money" is a practice whereby new tenants are asked to pay additional monies to obtain a rental unit. If a superintendent is acting outside the scope of his/her employment, that is, not acting for or as the landlord, in most cases no offence is considered to have been committed by requiring key money from a tenant. Because superintendents sometimes control or appear to control the selection process for new tenants, the power to prosecute could be extended to cover this situation by explicitly making it an offence for superintendents to collect key money.

Currently, payment of any amount of money from a tenant to a landlord is an offence if it is in addition to the regular rent. This is necessary in order to police the charging of key money and similar charges, without Government approval.

However, there are many types of charges that are covered by this prohibition, and some of these seem less reasonable to the public than others.

The rent control legislation could make exceptions to the general prohibition against "key money" for charges like: the direct bank charges for bounced cheques; the direct costs of cutting new keys for units and parking garages, beyond the original keys provided; and the cost (up to a certain amount) for superintendent services in letting tenants who lost their keys into their units outside normal hours.

Currently, a Judge hearing a case brought under the **RRRA** has no power to order the accused to pay restitution to the victim of the offence. The fact that the landlord voluntarily repaid the victim is only one factor in sentencing. This could be provided for as a Court power under the rent control legislation for various types of offenses. However, many people have concerns about using the criminal courts to enforce civil remedies.

Under the **RRRA**, some prosecutions have not been carried out because by the time an individual is aware that a offence may have been committed and reports it to the investigators, the limitation period has expired. To address this, the starting point for counting the limitation period could be changed to the date that the government becomes aware of the offence and lengthen the period to two years.

Currently, it is an offence to fail to pay money that is required to be paid under an Order. This may be needed to ensure repairs that are ordered to be done, are done. However, the offence could be limited to that situation, removing quasi-criminal liability for failure to pay a rent order (landlord paying a rebate or a tenant paying under a whole building review order).

As a first stage penalty for failure to comply with particular requirements of the Act, there could be, as is currently, a result with lesser consequences than prosecution. Instead of suspension of collection of rent increases, rent increases could be restricted or delayed.

Provision could be made to prohibit any increase in maximum rent and/or the rent charged or even to reduce the maximum rent until the landlord complies with a maintenance order. This could apply to cases of failure to register or charging excess rents.

PREFERRED APPROACHES FOR CONSULTATION

For the purposes of consultation, the identified preferred approaches are that the following additional offences be provided:

- failure to obey maintenance or standards orders issued by provincial rent regulators;
- building superintendents collecting key money;
- knowingly charging illegal rents;
- harassing tenants;
- hindering inspections.

The limitation period for prosecution should be extended to two years starting from the time the facts become known by the regulators. Failure to obey an order to pay a rent rebate or other monies should not be an offence except for standards or maintenance orders.

4.9 RENTAL HOUSING PROTECTION

ISSUE: REVISION OF THE CURRENT STATUTORY FRAMEWORK

BACKGROUND

Past experience has shown that increased regulation of rents will encourage some rental property owners to change their properties so they are no longer subject to rent regulation. Among such changes are conversions to condominium, conversions to co-operative, conversions to transient accommodations such as hotels, motels or apartment hotels, conversions to non-residential uses, and demolition of rental properties for redevelopment.

The Rental Housing Protection Act (RHPA) was introduced in 1986 and revised in 1989 to protect the existing rental housing stock in the province from these losses. Under the RHPA, a landlord must make an application to municipal council for approval to convert all or part of a rental property, or to demolish, renovate, or sever the rental property.

The application of the RHPA is restricted by the population of the municipality, the size of the rental property, and other factors. Most of the provisions of the Act apply only to municipalities which are listed in the regulations under the Act, and these include all municipalities with a population of 50,000 or more. Certain provisions, regarding conversions to condominium and to cooperative, do apply in all Ontario municipalities.

OPTIONS CONSIDERED

The current system relies on municipal enforcement of the Rental Housing Protection Act. One approach is to continue to let municipalities, where the RHPA applies, apply the existing rules. Where tenants express concerns, pressure will be applied to councils to ensure protection of rental housing. Tenants can also appeal council decisions to the Ontario Municipal Board.

Increased pressure to convert and demolish rental units will lead some landlords to attempt illegal demolitions, conversions and renovations. Effective response to these attempts must be timely, so additional enforcement resources may be required at the municipal level. An increased emphasis on landlord and tenant education would also complement the enforcement activity.

Possible criticisms of this system are that it relies on tenants to make their concerns known to municipal councils. There is also an unevenness to the approach because municipalities under 50,000 of population are not covered for demolitions or renovations.

An alternative approach is with continued municipal enforcement of the Rental Housing Protection Act but with stronger Provincial direction. The Ministry could be more directive in its comments to municipalities on applications under the RHPA, and would appeal municipal decisions to the OMB whenever the Ministry disagreed. As well, the Ministry would provide greater education activities and more enforcement support where appropriate.

Still another option is to revert administration of the Rental Housing Protection Act to the provincial level either directly or through a Board. Currently, applications are processed and decisions are made by local municipalities. This approach would have decisions be made by either provincial administrators, or a quasi-judicial hearings board. Decision-making by a quasi-judicial board would require a clear and explicit written provincial policy on protection of rental housing to ensure the government's intent is carried out.

This approach could ensure reasonably consistent administration of rental stock and tenant protection and some municipalities would be relieved to have this responsibility removed from the local level. On the other hand, provincial decision makers might not be as accessible to tenants and landlords as at the local level and some municipalities would be opposed to the removal of a previously local responsibility.

PREFERRED APPROACH FOR CONSULTATION

The preferred approach is to continue municipal administration of the RHPA with stronger provincial direction.

ISSUE: EXTEND COVERAGE OF RHPA TO SMALLER MUNICIPALITIES

BACKGROUND

Currently municipalities are included under the RHPA by listing them in the Regulations, and a policy decision was made in the past to limit these by population level (50,000).

OPTIONS CONSIDERED

Municipalities could be covered based on different criteria, such as inclusion within certain housing market areas. There are currently some smaller municipalities of under 50,000 that are part of larger metropolitan areas such as Vanier, Dundas and Ajax.

At the same time, some smaller municipalities have limited resources for administering new responsibilities and generally do not perceive that they have a rental housing problem.

PREFERRED OPTION FOR CONSULTATION

Extend RHPA coverage to smaller municipalities in larger metropolitan areas.

ISSUE: CHANGE THE CRITERIA THAT MUNICIPALITIES MUST CONSIDER WHEN CONSIDERING AN APPLICATION

BACKGROUND

Under the RHPA, municipal council may approve an application if at least one of the following criteria is met:

- if demolition is proposed, and the rental property is structurally unsound; or if renovation is proposed and the building is structurally unsound and occupied by tenants, vacant possession may be required to do renovations or repairs;

- the applicant agrees to provide accommodation of a similar rent and quality in the same area for tenants who are evicted; and to provide the same number of new rental units in a similar rental range in the same area; or

- in the opinion of council, the proposal will not adversely affect the supply of affordable rental housing in the municipality.

OPTIONS CONSIDERED

To provide greater certainty in protection of rental housing stock and tenants, the mandatory approval criteria could be changed to include:

- adding a criterion requiring tenant approval of the application;

- requiring applicants to show why they cannot meet the second criterion -- replacing rental units with new units at similar rent and rehousing tenants in other units at similar rents -- before a municipality can use criterion three (no adverse affect on supply) for approval;

- revising the third criterion leaving less discretion to municipal councils to determine the meaning of "adversely affect" supply of affordable rental housing; and

- introducing mandatory protection for tenants, including continued tenure for a period of time, cost of moving and special provisions that may be appropriate in a given case.

While these suggestions would enhance the protection of the rental stock, the tenant approval criteria and mandatory protective measures could add a heavy administrative burden to municipalities which would have to monitor voting and tenant protective measures. Other legislation such as the Landlord and Tenant Act may also have to be amended. In addition, municipalities could oppose limitations on their discretionary powers.

Some have suggested that mandatory 'linkage' payments could be required to be made to municipal or provincial housing funds to replace rental units that are allowed to be removed. This could assist in replacing units removed from the affordable rental stock and several municipalities are already using this approach in conjunction with new development approvals.

PREFERRED APPROACH FOR CONSULTATION

The preferred approach is that municipalities be given the authority to require payments for conversion or demolition. These payments would be directed to municipal housing corporations for the provision of new rent units.

ISSUE: EXTEND THE RHPA TO COVER SMALLER RENTAL PROPERTIES AND CONDOMINIUMS

BACKGROUND

Section 3(2) of the RHPA exempts buildings with 4 or less units. The current system exempts all registered condominiums. Rented condominium units can therefore be converted to other uses such as owner occupancy, suite hotel, or commercial uses without RHPA approval.

OPTIONS CONSIDERED

The figure of 4 units could be lowered so that properties with 2, 3, or 4 units are covered by the Act. Municipalities might object to this extension because it would extend protection to many illegal units, especially if properties with only two or three units are covered.

It could also discourage small property owners from bringing units into the rental market and would strongly discourage new home purchasers who could only afford ownership by renting out one or two units until they obtained increased incomes and needed extra room for growing families.

Some have suggested that the legislation be extended to include rented condominium units. It has also been suggested that owners of condominiums who rent units be required to inform prospective tenants that they would not have RHPA protection.

PREFERRED APPROACH FOR CONSULTATION

At this time, no further change is recommended in these areas.

ISSUE: EXTEND COVERAGE OF THE RHPA TO MOBILE HOME PARKS AND LAND LEASE COMMUNITIES

BACKGROUND

The RHPA only covers mobile home parks and land lease communities in very limited circumstances. Residents are vulnerable to conversion to other uses or to co-operatives.

OPTIONS CONSIDERED

An extension of the legislation would protect these kinds of properties against conversion to co-operative, condominium or redevelopment of land for non-residential uses. Coverage could be extended either in all municipalities or only in scheduled municipalities (ie: currently those with populations of 50,000 or more).

Although this would be a positive move to protect affordable housing it could create a disincentive for municipalities to approve new mobile home parks if eventual redevelopment is impeded. It would also discourage landowners from establishing new parks or communities for the same reasons.

One of the clear problems in dealing with these types of development is that many existing mobile home parks and land lease communities are in rural municipalities that are not subject to the RHPA. As well, mobile homes are believed to have a limited life span and sometimes need to be replaced.

PREFERRED APPROACH FOR CONSULTATION

The issues facing mobile home parks and land lease communities are complex. They are currently under review by an interministerial committee. While coverage of these communities under rent control will be continued, it was thought better to wait until the inter-ministerial committee's report is prepared prior to moving further into the reforms needed in this area.

ISSUE: EXTEND COURT POWERS TO ORDER RETURN OF ILLEGALLY RENOVATED UNITS TO FORMER CONFIGURATION AND TO REINSTATE TENANTS AT FORMER RENTS

BACKGROUND

Currently provision only applies to units that have been converted. In some smaller buildings, a landlord may undertake renovations that reduce the number of rooms or units in order to create larger luxury rental units. For example, a six room rooming house may be made into 4 self contained apartments.

OPTIONS CONSIDERED

One approach would be to require the landlord to restore the units to the original unit or room configuration and to reinstate the original tenants at their former rents. This would be similar to the approach taken to conversion. The other option is to maintain the status quo.

PREFERRED APPROACH FOR CONSULTATION

It is proposed that court powers be extended to order reinstatement of tenants in renovated units and order renovated units converted to their original configuration.

ISSUE: RHPA AND RENOVATIONS AND REPAIRS REQUIRING VACANT POSSESSION

BACKGROUND

The RHPA allows municipal controls over renovations and repairs extensive enough to require vacant possession even if there is no change in the total number of units. This was included in the current legislation to allow control of luxury renovations.

OPTIONS CONSIDERED

If the new rent control legislation permits some acceptable treatment of "necessary" or "minimum standard" capital expenditures, and particularly if capital projects are previewed by some government agency for eligibility, it would be redundant to require RHPA approval as well. RHPA approval would be required only where the renovation resulted in a change in the number of rental units and the municipality would then consider the impact on the supply of affordable rental housing.

This approach would control the loss of affordable rental units but would provide no opportunity for municipalities to impose conditions to assist tenants required to vacate as a result of necessary renovations that do not change the number of rental units.

PREFERRED APPROACH FOR CONSULTATION

The preferred approach is that RHPA coverage be eliminated for renovations and repairs where the number of units does not change if capital expenditures are provided for under rent control legislation.

APPENDIX A

GLOSSARY OF RENT TERMS

GLOSSARY OF RENT TERMS

This glossary is intended to provide a basic overview of some of the more technical terms associated with rent regulation and is not meant to serve as a legal interpretation or a legally-binding definition. The Residential Rent Regulation Act, 1986 and regulations should be referred to for a statutory explanation of these terms.

Capital Expenditure

- is the amount spent on major renovations or additions to a building, equipment or facilities, i.e., for a new roof or furnace. It might also be a major expenditure for repair, replacement and maintenance, i.e., for new plumbing, but only if the benefit lasts longer than one year.

Economic Loss

- the landlord is making less than the *permitted rate of return*.

Equalization

- where there are different rents for similar units in a *complex*, an application may be made to charge similar rents for the same type of units.

Extraordinary Operating Costs

- specific operating costs of the landlord exceed the amount provided for in the *guideline* by an amount set out in regulation.

Financial Loss

- the landlord is losing money because the cost of running and financing the building is greater than the revenue from rents.

First Effective Date

- is the date of first rent increase for any unit in a building, related building, related group of buildings, mobile home park or land lease community which is used by the landlord on an application for rent review. The same effective date of increase is then used on the order and any *phase ins*.

Guideline

- the annual per cent increase in *maximum rent* allowed under the Act as set out in the *Residential Complex Cost Index*. The guideline is 4.6% for 1990 and 5.4% for 1991.

Hardship Relief

- the landlord is making a return which is less than two per cent of costs.

Justification Factors

- refers to the considerations and rules that determine the allowed rent increase as set out in the Residential Rent Regulation Act, 1986 and the proposed moratorium amendments.

Key Money

- the practice where individuals demand 'under-the-table' payments from prospective tenants in return for the opportunity to rent a unit. Under the Residential Rent Regulation Act, 1986, those convicted of charging key money face a fine of up to $5,000 for individuals; up to $50,000 for corporations.

Maximum Rent

- the lawful maximum rent which can be charged for a rental unit. Maximum rent can be higher than the rent actually charged by the landlord.

Ordered Rent Increase

- is the amount of rent increase for a unit set out in an order under the Residential Rent Regulation Act, 1986 or the amendments to it, based on an application by a landlord for a rent increase beyond the guideline maximum. All information from landlords and tenants is reviewed including the results of any investigations and a decision is made on the justified rent increase. An order is then issued to both the landlord and the tenant.

Pass Through

- some of a landlord's costs can be reflected or passed through in rent increases. Rent regulation limits the amount that can be passed through.

Permitted Rate of Return

- allows landlords of buildings first occupied after 1975 to claim a rate of return. For buildings where the building permit was issued prior to January 1, 1987 the permitted rate of return is 10 per cent of a defined equity base; after January 1, 1987, the permitted rate is equal to the three year average long-term Canada Bond rate plus 1 per cent.

Phase in

- refers to provisions of the Residential Rent Regulation Act, 1986 that do not allow for the *pass through* of certain rent increases immediately but rather, allow these costs to be phased in over several years. These provisions relate to *financial loss*, *economic loss*, *hardship relief*, increased financing costs and *equalization*.

Rebate

- where a landlord has charged an illegal rent, a tenant has the right to obtain a rebate of the overpayment. The landlord is legally obligated under an order from the Ministry, to repay any illegal rent collected.

Rent Determination

- the process used by rent review administrators for determining the *maximum rent* for a rental unit. Landlords and tenants may appeal an administrator's decision to the Rent Review Hearings Board.

Rental Housing Protection Act (RHPA)

- the statute which regulates the demolition, conversion and major repairs or renovation of rental housing.

Rent Registry

- a repository of rents actually charged in 1985 and rent review orders. These rents are up-dated by guideline increases and ordered increases. Rent information is available to the public primarily for buildings with seven or more units.

Residential Complex

- a building, related group of buildings, or a mobile home park, in which one or more rental units are located. It can also mean a site or a group of related sites, upon which sits a permanent single family dwelling.

Residential Complex Cost Index

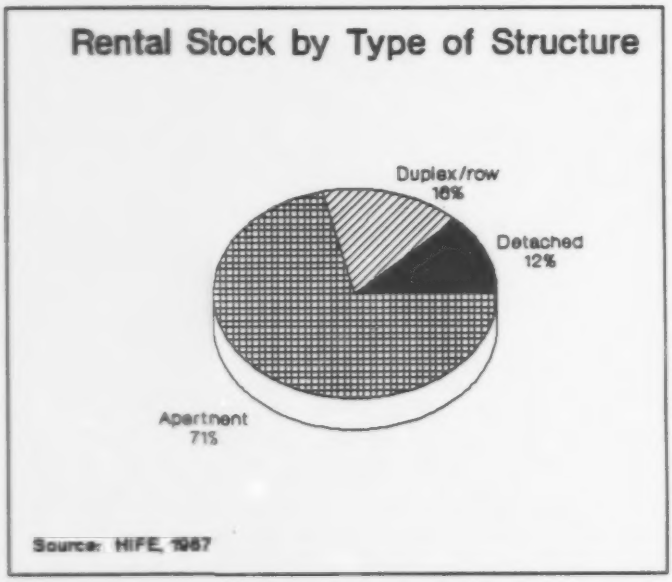
- is a three-year moving average of operating cost changes experienced by a typical landlord and calculated according to a formula set out in the Residential Rent Regulation Act, 1986 and regulations.

APPENDIX B

KEY STATISTICS ON RENTAL HOUSING IN ONTARIO

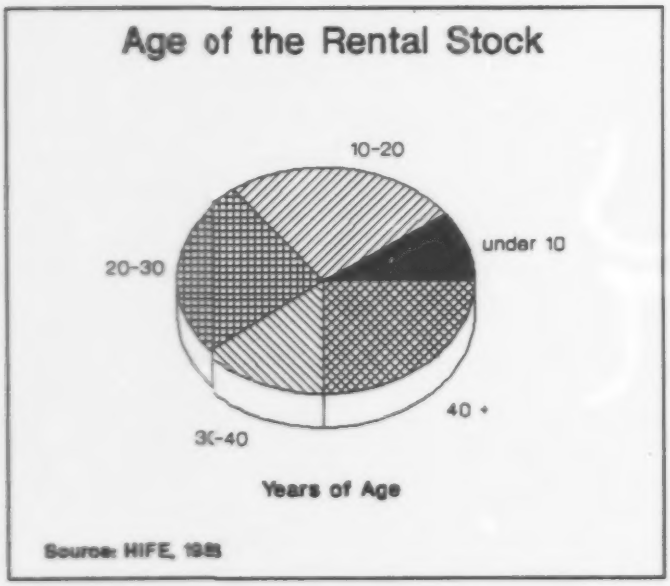
1. Rental Stock

- There are an estimated 3.2 million housing units in Ontario of which 37% or 1,254,000 are rented. Approximately 2.6 million Ontarians live in these units. About 84% or 1,052,000 units of the total rental housing stock, are owned privately by landlords. The rest are owned by the government and non-profit groups.



- Roughly 40% of rental units are found in high-rise structures defined as having 5 storeys or more.

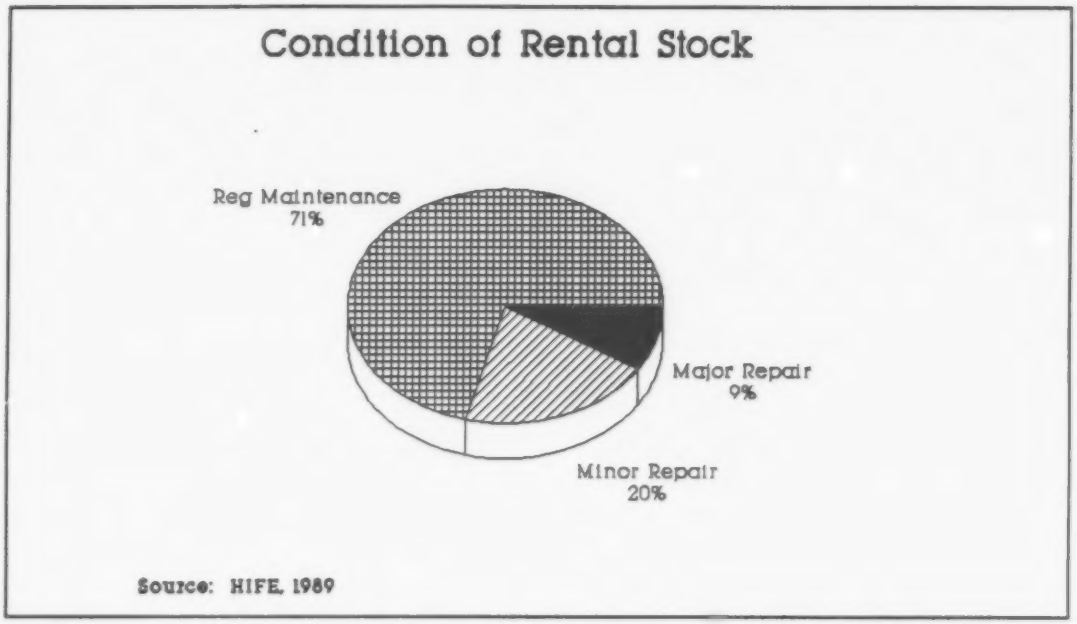
- Low-rise apartment structures (less than 5 storeys) account for about 30% of the rental stock.



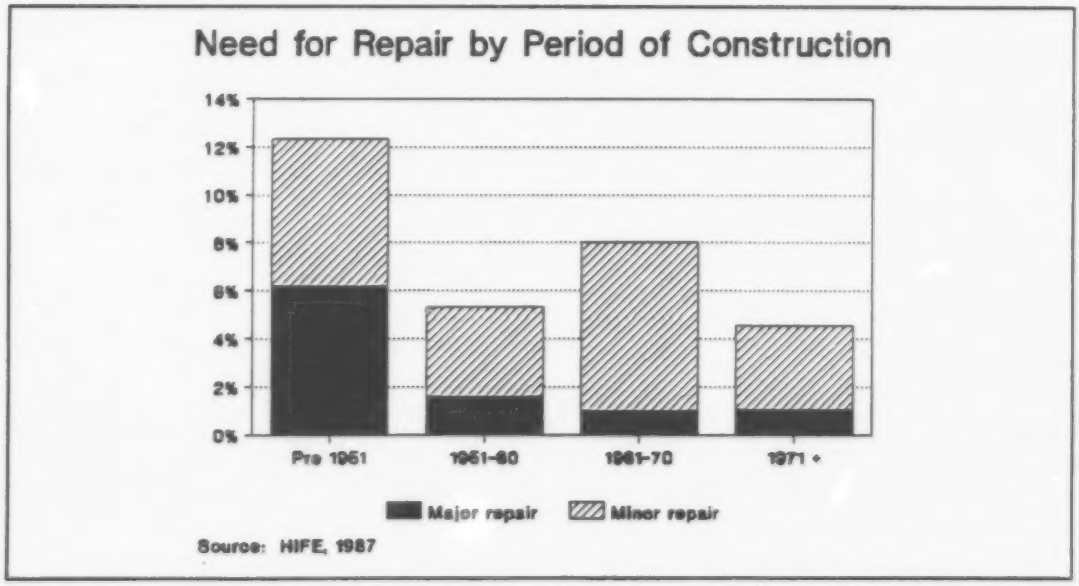
- Ontario's rental housing stock is aging - 65% of Ontario's rental stock is more than 20 years old.

- Age of building has an important bearing on the condition of the rental stock. Generally, the older the building, the greater the need for repairs and maintenance.

2. Condition of the Rental Stock



- It is estimated that almost 30% of Ontario's rental stock is in need of either minor or major repair. It is important to note that these estimates are based on data collected from occupant surveys and not technical inspections of dwellings.



3. The Rental Market

- Rental vacancy rate for buildings of 3 or more units measured by Canada Mortgage and Housing Corporation (CMHC) in October 1990:

Ontario	1.4%
Toronto	1.0%
Ottawa	0.5%
Hamilton	1.3%

- Rental vacancy rate for Ontario for buildings of 3 or more units, 1987 to 1990 (CMHC):

1987	April	0.8%
	October	0.9%
1988	April	0.8%
	October	0.8%
1989	April	0.9%
	October	0.9%
1990	April	1.3%
	October	1.4%

- Weighted average rents in selected metropolitan areas, two-bedroom units in privately-owned rental buildings of 3 units or more (CMHC):

	October 1989	October 1990
Toronto	$648	$689
Ottawa	$607	$640
Hamilton	$491	$523

4. New Rental Production

- Privately-initiated rental starts, Ontario (CMHC):

1986	10,330
1987	15,078
1988	12,830
1989	11,436
January-November 1990	11,341

- Condominium starts, Ontario (CMHC):

1986	9,814
1987	17,776
1988	20,833
1989	20,213
January-November 1990	11,165